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Eighth report on the protection of persons in the event of disasters

by Eduardo Valencia-Ospina, Special Rapporteur*

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Annex

Preamble and text of the draft articles on the protection of persons in the event of disasters, as proposed by the Special Rapporteur in his eighth report . . . 101

I. Introduction

1. The draft articles on the protection of persons in the event of disasters, which were developed by the International Law Commission from 2008 to 2014, were adopted on first reading in 2014. Upon their adoption, the Commission decided, in accordance with articles 16 to 21 of its Statute, to transmit them, through the Secretary-General, to Governments, competent international organizations, the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2016. The Commission also indicated that it would welcome comments and observations on the draft articles from the United Nations, including the Office for the Coordination of Humanitarian Affairs of the Secretariat and the United Nations Office for Disaster Risk Reduction, by the same date.[1]

2. During the course of the elaboration of the draft articles, comments and observations were made during the successive annual debates in the Sixth Committee, held from the sixty-third to the sixty-ninth sessions of the General Assembly, by the delegations of 61 States (Algeria, Argentina, Australia, Austria, Belarus, Brazil, Chile, China, Colombia, Cuba, Cyprus, the Czech Republic, Denmark (on behalf of the Nordic States of Denmark, Finland, Iceland, Norway and Sweden), Egypt, El Salvador, Estonia, Finland (on behalf of the Nordic States), France, Germany, Ghana, Greece, Hungary, India, Indonesia, the Islamic Republic of Iran, Ireland, Israel, Italy, Jamaica, Japan, Malaysia, Mexico, Monaco, Mongolia, Myanmar, the Netherlands, New Zealand, the Niger, Pakistan, Peru, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, the Sudan, Switzerland, Thailand, Tonga (on behalf of the 12 Pacific small island developing States of Tonga, Fiji, Kiribati, the Marshall Islands, Micronesia, Nauru, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tuvalu and Vanuatu), Trinidad and Tobago, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Zambia. Statements were also made by the observer delegations of the European Union, also on behalf of its member States, and IFRC. Further comments and observations, on file with the Codification Division, were received in writing prior to 2014 from six States: Belgium (8 May 2012), Cuba (5 January 2011 and 1 October 2012), El Salvador (17 January 2011), Germany (26 February 2009), Malaysia (26 August 2009) and Mexico (5 November 2008).

3. Conscious of the Commission's past experience regarding the submission of comments and observations on other of its first reading drafts, the Special Rapporteur self-imposed a two-and-a-half month extended time limit, until 15 March 2016, to enable him to reflect in the present report those responses that might be received well after the original deadline. At the time of writing, comments and observations on the draft articles, as adopted on first reading, were received, in response to the request of the Commission, from the following States: Australia (8 January 2016), Austria (12 January 2016), Cuba (2 February 2016), the Czech Republic (1 January 2016), Ecuador (11 February 2015), Finland (on behalf of the Nordic States) (18 December 2015), Germany (29 May 2015), the Netherlands

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[1] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10* (A/69/10), para. 53.

(30 December 2015), Qatar (12 March 2015) and Switzerland (12 January 2016). Responses were likewise received from the Association of Caribbean States (28 January 2016), the Council of Europe (25 November 2014) and the European Union (17 December 2015), and from the Food and Agriculture Organization of the United Nations (FAO) (14 January 2016), the International Organization for Migration (IOM) (18 January 2016) and the World Bank (3 November 2014), as well as ICRC (19 January 2016) and IFRC (21 January 2016). Comments and observations were also received from the Office for the Coordination of Humanitarian Affairs (23 December 2015), the United Nations Office for Disaster Risk Reduction (8 December 2015) and the World Food Programme (WFP) (21 January 2016). The comments and observations received in response to the request of the Commission are reproduced, as submitted, in a separate report of the Secretary-General, prepared by the Secretariat.[2]

4. In order to facilitate the Commission's second reading of the draft articles, the present report contains, systematized on an issue and article by article basis, summaries of all the comments and observations made since 2008, orally or in writing. Under each issue and article dealt with, preceded by the first reading text of the article concerned, the summaries of the relevant comments and observations made prior to the General Assembly resolution inviting written submissions are presented separately from those received in response to that request. While the former are grouped whenever possible, the latter are each presented in a separate paragraph for ease of reading. Most of them suggest further clarification of the first reading draft articles in the explanations given in their respective commentaries, which were also adopted by the Commission. The Special Rapporteur sees merit in a good number of such suggestions. In that connection, it must be recalled that, in accordance with the Commission's constant practice, the drafting of commentaries can only take place once the provisional, and *a fortiori*, final text of the draft articles is adopted. Consequently, and in order to achieve maximum efficiency, the Special Rapporteur will not address in the present report suggestions that relate to the drafting of commentaries. Rather, he will await the Commission's adoption on second reading of the draft articles before incorporating, as appropriate, into the draft of the accompanying commentaries (for which he is initially responsible) suggestions that may still be made within the Commission and those already advanced by States and international organizations and other entities.

5. The present report, therefore, will concentrate on concrete suggestions intended to modify the text of draft articles as adopted on first reading. A compendium of the preamble and draft articles on the protection of persons in the event of disasters, as proposed by the Special Rapporteur on the basis of such suggestions, is contained in the annex to the present report.

6. Given the fact that written comments and observations were requested for submission early in 2016, the Commission at its 2015 session did not consider the topic that is the subject of the present report. However, disasters, in particular those following the adoption of the Commission's first reading draft articles on the protection of persons in the event thereof, were given considerable attention, especially in 2015, at a number of important intergovernmental and

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[2] A/CN.4/696. The full text of the various comments and observations are also available (in the language of submission) on the website of the Commission, located at http://legal.un.org/ilc/guide/6_3.shtml.

non-governmental international conferences and meetings as well as in academic circles, such as the Third United Nations World Conference on Disaster Risk Reduction held in Sendai, Japan, from 14 to 18 March 2015, which adopted the Sendai Framework for Disaster Risk Reduction 2015-2030 (Sendai Framework);[3] the meeting convened by the Inter-Parliamentary Union on the occasion of the Sendai Conference, held in Sendai on 13 March 2015, which adopted an outcome statement on governance and legislation on disaster risk reduction;[4] the twenty-first session of the Conference of the Parties and the eleventh session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at the conference on climate change held in Paris from 30 November to 12 December 2015, which adopted the Paris Agreement;[5] the thirty-second International Conference of the Red Cross and Red Crescent held in Geneva from 8 to 10 December 2015, which adopted in particular resolution No. 6;[6] the United Nations summit for the adoption of the post-2015 development agenda held at United Nations Headquarters in New York from 25 to 27 September 2015, which adopted the 2030 Agenda for Sustainable Development;[7] the seventieth session of the General Assembly, which adopted more than twenty-five resolutions[8] directly or indirectly concerned with disasters and related issues dealt with in the Commission's draft articles, in particular resolutions 70/106 on the strengthening of the coordination of emergency humanitarian assistance of the United Nations, 70/107 on international cooperation on humanitarian assistance in the field of natural disasters, from relief to development and 70/204 on the International Strategy for Disaster Reduction; the Nansen Initiative Global Consultation held in Geneva on 12 and 13 October 2015, which adopted the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change;[9] the Regional Consultation Meetings on Law and Disasters convened by IFRC at, among other places, Toluca, Mexico, on 13 and 14 November 2014, and at Addis Ababa on 30 June and 1 July 2015; the Expert Consultation on Accelerating Progress in the Improvement of the Facilitation and Regulation of International Disaster Assistance organized in Geneva on 15 June 2015 by IFRC and the Government of Switzerland; the Panel on Disasters and the Law organized in Geneva in August 2015 by the World Health Organization; the establishment of the International Disaster Law Project of the Italian universities Roma Tre, Bologna, Scuola Superiore Sant'Anna and Uninettuno; the research project of the law school of the University of Buenos Aires that concluded with the book *Respuestas del Derecho Internacional a Desastres y otras Consecuencias de Fenómenos Naturales*;[10] the expert consultations convened by the Office for the Coordination of Humanitarian Affairs together with the Oxford Institute for Ethics, Law and Armed Conflict and the Oxford Martin Programme on Human Rights for Future Generations on 10 and 11 July 2014, which led to the adoption of guidelines on the law relating to humanitarian relief operations in situations of armed conflict; the Disaster Relief Thought Leadership Forum: Advancing the International Program for Disaster Relief: Challenges for Lawyers and Policy Makers held at the Dickson Poon School of Law of King's College in London on 30 October 2014, followed by the launching of the book *International Law of Disaster Relief*, edited by David D. Caron, Michael J. Kelly and Anastasia Telesetsky; the Conference on Disasters and Fundamental Rights, convened by the Association Française pour la Prévention des Catastrophes Naturelles and the United Nations Educational, Scientific and Cultural Organization (UNESCO) at UNESCO headquarters in Paris on 24 June 2014, on the basis of the final report with conclusions of the research project "Disasters and Human Rights" of the University of Limoges; the International Disaster and Risk Conference organized by the Global Risk Forum at Davos, Switzerland, from 24 to 28 August 2014; the First Northern European Conference on Emergency and Disaster Studies, organized by the Changing Disaster Project of the University of Copenhagen, held in Copenhagen from 9 to 11 December 2015; the Summer School on European Disaster Response Law in an International Context of the Università degli Studi of Milan held from 7 to 11 September 2015; the research resulting in the *Research Handbook on Disasters and International Law*[11] at the School of Law of the University of Reading; the annual course on international disaster law at the International Institute of Humanitarian Law in San Remo, Italy; the "Workshop on Disasters and International Law in the Asia-Pacific Region" held at the University of New South Wales on 24 July 2015;[12] and the establishment of an interest group on disaster law of the American Society of International Law in 2015. More recently, in February of 2016, the research project of the Human Rights Centre of Queen's University in Belfast concluded with the "Working Paper on the ILC Draft Articles on the Protection of Persons in the event of Disasters";[13] and an international conference on the topic "Protection of persons in times of disasters — international and European legal perspectives" was held in Rome on 3 and 4 March 2016 under the auspices of the Italian International Disaster Law Project. The Special Rapporteur is particularly grateful for the convening of the following expert-level meetings focused on the draft articles on the protection of persons in the event of disasters, as adopted on first reading: the symposium "This is not a drill: confronting legal issues in the wake of international disasters" held at the law school of Vanderbilt University in Nashville, United States, on 13 February 2015; the expert meeting on the International Law Commission's draft articles on the protection of persons in the event of disasters convened by the Department of Law of Roma Tre University, Italy, on 8 and 9 June 2015;[14] and the symposium on the International Law Commission's draft articles on protection of persons in the event of disasters organized by the Geneva Academy of International Humanitarian Law and Human Rights and held in Geneva on 11 July 2014.

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[3] *Sendai Framework for Disaster Risk Reduction 2015-2030*, Third World Conference on Disaster Risk Reduction, 14 to 18 March 2015, Sendai, Miyagi, Japan (A/CONF.224/CRP).

[4] *Outcome statement — Governance and legislation for disaster risk reduction*, Parliamentary meeting on the occasion of the Third World Conference on Disaster Risk Reduction, 13 March 2015, Sendai, Miyagi, Japan.

[5] *Paris Agreement under the United Nations Framework Convention on Climate Change*, Twenty-first session of the Conference of the Parties, (COP), 12 December 2015, Paris, France, as contained in the report of the Conference of the Parties (FCCC/CP/2015/10/Add.1, Decision 1/CP.21).

[6] Thirty-second International Conference of the Red Cross and Red Crescent, 8 to 10 December 2015, resolution 6 on Strengthening Legal Frameworks for Disaster Response, Risk Reduction and First Aid.

[7] General Assembly resolution 70/1.

[8] For example, General Assembly resolutions 70/104, 70/105, 70/106, 70/107, 70/110, 70/114, 70/134, 70/135, 70/147, 70/150, 70/153, 70/154, 70/165, 70/169, 70/194, 70/195, 70/197, 70/202, 70/203, 70/204, 70/205, 70/206, 70/208, 70/222, 70/224 and 70/235.

[9] *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Final draft, Nansen Initiative Global Consultation, 6 October 2015, Geneva.

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[10] Silvina Sandra González Napolitano et al., *Respuestas del Derecho Internacional a Desastres y otras Consecuencias de Fenómenos Naturales*, 1a ed., University of Buenos Aires, Avellaneda: SGN Editora, 2015.

[11] S. Breau, K.L.H. Samuel (Eds.), *Research Handbook on Disasters and International Law*, Edward Elgar Publishing, United Kingdom, 2016.

[12] *Report of the Workshop held 24 July 2015 Faculty of Law UNSW Australia — Disasters and International Law in the Asia-Pacific Workshop*, Australian Human Rights Centre, UNSW Australia, University of Technology Sydney, International Federation of Red Cross and Red Crescent Societies, Australian Red Cross, 24 July 2015.

[13] R. Connolly, E. Flaux and A. Wu, "Working Paper on the ILC Draft Articles on the Protection of Persons in the event of Disasters", Human Rights Centre, Queen's University Belfast, February 2016.

II. Comments and observations on the draft articles on the protection of persons in the event of disasters, as adopted on first reading

A. General comments and observations

1. Comments and observations made prior to the adoption of the first reading draft

7. General comments and observations on the draft articles were made during their consideration, as proposed by the Commission, in the Sixth Committee at the sixty-fourth to sixty-ninth sessions of the General Assembly.

8. Greece,[15] Ireland,[16] Japan,[17] New Zealand,[18] Portugal,[19] Slovenia,[20] Spain,[21] Slovakia,[22] the United Kingdom[23] and the European Union[24] expressed general support for the balance achieved in the draft articles as adopted on first reading. Slovenia cautioned against reopening contentious issues, which could lead to upsetting the balance in the text as adopted on first reading.[25] Conversely, China was of the view that a salient characteristic of the draft articles was that it was short on *lex lata* but long on *lex ferenda*, in the sense that some of the articles lacked the support of general State practice, while the commentaries included predominantly quotations from non-binding instruments.[26]

9. Chile,[27] Cuba[28] and Myanmar[29] recalled the importance of full observance and respect for the principle of non-intervention as enshrined in the Charter of the United Nations. Cuba was of the view that the draft articles should not, under any

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[14] See Giulio Bartolini, Tommaso Natoli and Alice Riccardi, Report of the Expert Meeting on the ILC's Draft Articles on the Protection of Persons in the Event of Disasters, International Law and Disasters Working Papers Series 03, 2015, p. 96.

[15] A/C.6/69/SR.21, para. 19.

[16] A/C.6/69/SR.19, para. 172.

[17] A/C.6/69/SR.20, para. 53.

[18] A/C.6/69/SR.21, para. 31.

[19] A/C.6/69/SR.19, para. 156.

[20] A/C.6/69/SR.20, para. 40.

[21] A/C.6/67/SR.18, para. 117.

[22] A/C.6/69/SR.20, para. 73.

[23] A/C.6/69/SR.19, para. 166.

[24] A/C.6/69/SR.19, para. 72.

[25] A/C.6/67/SR.18, para. 125.

[26] A/C.6/69/SR.20, para. 24.

[27] A/C.6/67/SR.19, para. 10, and A/C.6/68/SR.24, para. 69.

[28] A/C.6/66/SR.24, para. 27; A/C.6/67/SR.20, para. 43; A/C.6/68/SR.25, para. 67; and A/C.6/69/SR.21, para. 54.

[29] A/C.6/64/SR.21, para. 2.

circumstances, give rise to interpretations that violated that principle.[30] Indonesia expressed the concern that the draft articles had not yet fully achieved a balance between the core principles of sovereignty and non-intervention and the duty to protect persons in the event of disasters.[31] The European Union supported the effort to strike a balance in the draft articles between the need to safeguard the national sovereignty of the affected States on the one hand and the need for international cooperation regarding the protection of persons in the event of disasters on the other, and emphasized the need, in humanitarian emergencies, for full respect for humanitarian principles and human rights.[32]

10. The decision of the Commission to exclude the concept of "responsibility to protect" from the scope of application of the draft articles was endorsed by China,[33] Colombia,[34] Cuba,[35] the Czech Republic,[36] Ghana,[37] Ireland,[38] the Islamic Republic of Iran,[39] Israel,[40] Japan,[41] Myanmar,[42] the Russian Federation,[43] Spain,[44] Sri Lanka,[45] Thailand[46] and Venezuela.[47] Conversely, Poland[48] was of the view that the concept should apply to disaster situations. Hungary,[49] Finland (on behalf of the Nordic States)[50] and Portugal[51] suggested that it be kept in mind. Austria, while acknowledging that the Commission had excluded the concept, observed that it was conceivable that international law could evolve.[52]

11. The United States[53] and Israel[54] expressed reservations regarding the resort to a rights-duty approach, and preferred a focus on providing practical guidance to countries in need of, or providing, disaster relief. Trinidad and Tobago[55] supported the rights-duty approach, but expressed the belief that such an approach could apply between the affected State and its population only. South Africa encouraged the Commission to incorporate a stronger rights-duty approach between States and populations affected by disasters by, for example, strongly encouraging States to

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[30] A/C.6/66/SR.24, para. 27, and A/C.6/67/SR.20, para. 43.
[31] A/C.6/66/SR.24, para. 70.
[32] A/C.6/67/SR.18, para. 69.
[33] A/C.6/64/SR.20, para. 22, and A/C.6/66/SR.23, para. 42.
[34] A/C.6/66/SR.22, para. 25.
[35] A/C.6/64/SR.21, para. 10.
[36] A/C.6/64/SR.20, para. 43.
[37] A/C.6/64/SR.22, para. 12.
[38] A/C.6/64/SR.22, para. 14.
[39] A/C.6/64/SR.22, para. 82, and A/C.6/65/SR.24, para. 36.
[40] A/C.6/64/SR.23, para. 40.
[41] A/C.6/66/SR.25, para. 26.
[42] Statement of 30 October 2009, 21st meeting, sixty-fourth session of the General Assembly.
[43] A/C.6/64/SR.20, para. 46.
[44] A/C.6/64/SR.20, para. 48.
[45] A/C.6/64/SR.21, para. 53, and A/C.6/66/SR.27, para. 18.
[46] A/C.6/64/SR.21, para. 16; A/C.6/66/SR.24, para. 89; and A/C.6/67/SR.19, para. 40.
[47] A/C.6/64/SR.21, para. 41.
[48] A/C.6/64/SR.21, para. 76; A/C.6/65/SR.23, para. 101; A/C.6/66/SR.21, para. 85; and A/C.6/68/SR.24, para. 108.
[49] A/C.6/65/SR.21, para. 33.
[50] A/C.6/63/SR.22, para. 55.
[51] A/C.6/63/SR.25, para. 6.
[52] A/C.6/65/SR.23, para. 39.
[53] A/C.6/65/SR.25, para. 15, and A/C.6/68/SR.23, para. 48.
[54] A/C.6/68/SR.25, para. 76, and A/C.6/69/SR.20, para. 66.
[55] A/C.6/69/SR.26, para. 116.

enter into national, multilateral, regional and bilateral agreements that would ensure that in the event an affected State was unable to provide adequate relief and assistance to its population owing to a lack of resources, States parties to the agreements would have a legally binding duty to provide assistance.[56]

12. Slovenia maintained that the Commission should establish a set of principles and rules underpinning international disaster relief based on the recognition of rights and obligations of the States involved.[57]

13. The European Union recommended that a reference to regional integration organizations be included in the draft texts or in the commentaries thereto.[58]

14. Ecuador called for the inclusion of provisions recognizing the right of displaced persons to protection and security in situations of disasters.[59]

2. Comments and observations received in response to the request of the International Law Commission

15. Australia was hopeful that the Commission's work in highlighting the complex array of challenges inherent in international disaster risk reduction and response, coupled with the adoption in March 2015 of the Sendai Framework, would reinforce continued international cooperative efforts. It also encouraged further discussion as to whether the proposed creation of new duties for States or the novel application of principles drawn from other areas represented the most effective approach. It further called for a careful balance to be struck between those elements of the draft articles that could encroach on the core international law principles of State sovereignty and non-intervention against the likelihood that their implementation would effectively assure tangible and practical benefits in terms of reducing the risk of, ameliorating the effects of or improving recovery from disasters.

16. The Czech Republic was of the view that the Commission had struck an appropriate balance between the principles of non-intervention and sovereignty and the humanitarian principles and human rights that guided the provision of assistance by the assisting actors to the affected State.

17. Finland, on behalf of the Nordic States, maintained that the draft articles presented a coherent set of codified norms in an increasingly relevant area of public international law. It further expressed the view that the draft articles set a clear duty for the State affected by a disaster to initiate, organize, coordinate and implement external assistance within its territory when necessary and, in the absence of sufficient national response capacity or will, to seek external assistance to ensure that the humanitarian needs of the affected persons were met in a timely manner. The Nordic States applauded the particular attention given to the needs of the individuals affected by disasters, with full respect for their rights, and pointed to the need for special measures of protection and assistance for particularly vulnerable persons. Reference was also made to the diverse roles of other actors, including intergovernmental, regional and relevant non-governmental organizations or other entities such as the Red Cross and the Red Crescent.

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[56] A/C.6/69/SR.20, para. 106.

[57] A/C.6/67/SR.18, para. 129.

[58] A/C.6/68/SR.23, para. 32.

[59] Comments submitted in writing, 11 February 2015.

18. Germany maintained that, in general, the draft articles provided good recommendations that supported international practice and domestic legislation.

19. The Netherlands expected the draft articles to play an important role, particularly in situations where the scale of a disaster exceeded the response capacity of the affected State.

20. The Council of Europe expressed its satisfaction with the draft articles, which it viewed as an initial step in the direction of protecting the rights of people in emergency situations associated with disasters. At the same time, it called for more attention to be devoted to vulnerable groups, as well as to prevention, including education for risk and preparedness. It also considered important the right of victims to receive aid for the recovery of their lives after a disaster.

21. The European Union welcomed the draft articles as an important contribution to international disaster law, but called for sufficient room to be provided in the draft articles for the specificities of the European Union as a regional integration organization.

22. ICRC commended the Commission for its work on the draft articles and the commentaries, and maintained that they would constitute an important contribution to contemporary international law in line with the leading role played by the International Law Commission in its codification and progressive development. The thrust of the comments of ICRC concerned preserving the integrity of international humanitarian law and the ability of humanitarian organizations to conduct, in times of armed conflict (whether international or not, even when occurring concomitantly with natural disasters), their humanitarian activities in accordance with a neutral, independent, impartial and humanitarian approach.

23. While IFRC felt that the draft articles had a number of strong elements, including an emphasis on human dignity, human rights, cooperation and respect for sovereignty as well as on disaster risk reduction, it also felt they could be strengthened in several respects. As drafted, they were not sufficiently operational to have a direct impact on the most common regulatory problem areas in international response. They were also overly cautious with regard to the issue of protection. However, IFRC considered the reference to non-State humanitarian actors to be a positive development given the important contributions they made with regard to disaster response.

24. IOM was of the opinion that the draft articles and their commentaries did not reflect the importance of issues related to human mobility in the context of disasters. The second issue of concern for IOM was the specific plight of migrants in disaster situations, which was an issue that had attracted increased attention from States. It noted that while the commentary to draft article 1 specified that the draft articles applied to all persons present on the territory of the affected State, irrespective of nationality, the subsequent draft articles did not fully take into account the specific vulnerability of those affected persons who did not have the nationality of the affected State in disaster situations. Nor was any reference made to the need to ensure the access of foreign States to their nationals, including for the purpose of evacuation when protection and assistance in situ could not be guaranteed.

25. The Office for the Coordination of Humanitarian Affairs indicated its broad agreement with the substance of the draft articles and expressed support for the focus on persons in need, coupled with a rights-based approach.

26. The United Nations Office for Disaster Risk Reduction considered the work of the Commission on the topic as constituting a critical and timely contribution to the efforts of States and other stakeholders to manage disaster risk. Its assessment was that, overall, there existed a strong alignment and complementarity as well as a functional relationship between the draft articles and the Sendai Framework, in that the former articulated the duty to reduce the risk of disasters and to cooperate, while the latter established the modalities and measures that States needed to adopt to discharge such duty.

27. WFP welcomed the draft articles as it shared their objective: the protection of persons in the event of disasters. It especially welcomed the real progress that the draft articles could make in advancing the development of rules in the area as well as in the fields of disaster prevention and relief assistance. It also welcomed further discussion with regard to the adoption of common international standards through either the development of additional technical annexes on the detailed aspects of relief assistance or the establishment of a specific technical body comprising experts of State parties or a secretariat whose responsibility was to perform additional tasks related to the development of technical standards.

3. Recommendation of the Special Rapporteur

28. The Special Rapporteur sees no need at the present late stage, when the Commission is about to embark upon the second reading process, to make a recommendation, based on general comments and observations, on his approach to the topic, which after arduous discussion has been essentially adopted by the Commission and received widespread endorsement by States and international organizations. Accordingly, for the sake of efficiency, and without prejudice to the exercise by the Commission of its discretion as to how to organize the second reading, the Special Rapporteur will not entertain in the present report isolated suggestions for changes to the text of draft articles, made in that general context or in the context of concrete draft articles, when they are intended to revive a largely superseded debate for the purpose of fundamentally altering the Commission's basic approach; or specific suggestions which, by constant repetition, aim at disproportionally tilting in only one direction the delicate balance achieved throughout the draft between the paramount principles of sovereignty and non-intervention on the one hand and the no-less-vital protection of the individuals affected by a disaster on the other. Other specific textual suggestions made in the general context, such as the inclusion of a reference to "displacement", will be dealt with below under the relevant provisions of the first reading draft.

B. Draft article 1 [1]: Scope

The present draft articles apply to the protection of persons in the event of disasters.

1. Comments and observations made prior to the adoption of the first reading draft

29. Draft article 1 [1] was discussed during the consideration of the draft articles, as proposed by the Commission, in the Sixth Committee at the sixty-fourth, sixty-fifth and sixty-ninth sessions of the General Assembly. The Nordic States,[60] Chile,[61] the Russian Federation,[62] the Netherlands,[63] Ireland[64] and Spain[65] expressed their satisfaction with draft article 1 [1]. Germany[66] and the Nordic States[67] also agreed that a strict distinction between natural and man-made disasters would not be reasonable from the point of view of the affected person and that such a distinction could be artificial and difficult to sustain in practice in view of the complex interaction of different causes leading to disasters.

30. Hungary,[68] Austria,[69] Chile[70] and the United Kingdom[71] further expressed their agreement with the Commission's choice to articulate the draft articles' purpose in a separate provision (draft article 2 [2]). El Salvador[72] recommended that the content of draft article 1 [1] could be supplemented by more detail on the scope *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci*. Further, the observer delegation of IFRC[73] suggested that it should be clear that both domestic and international disaster responses were intended to be addressed since the lack of such distinction could have negative implications for other draft articles, such as draft articles 5 [7] and 6 [8], which seemed to cover international disaster response only.

31. Ghana[74] suggested that the term "protection" be clarified. The United Kingdom[75] and the Islamic Republic of Iran[76] considered that the terms "assistance" or "assistance and relief" in draft article 1 [1] were preferable. The United Kingdom[77] stated its understanding that assistance provided by States to their nationals abroad and consular assistance were excluded from the scope of application of the draft articles.

32. China[78] and the Russian Federation[79] supported the dual-axis approach, by which the Commission would concentrate on the rights and obligations of States vis-à-vis each other. Portugal,[80] on the other hand, expressed its concerns with such

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[60] A/C.6/64/SR.20, para. 7.
[61] A/C.6/64/SR.20, para. 28.
[62] A/C.6/64/SR.20, para. 45.
[63] A/C.6/64/SR.21, para. 90.
[64] A/C.6/64/SR.22, para. 14.
[65] A/C.6/69/SR.21, para. 39.
[66] Comments submitted in writing, 26 February 2009.
[67] A/C.6/64/SR.20, para. 7.
[68] A/C.6/64/SR.18, para. 60.
[69] A/C.6/64/SR.20, para. 12.
[70] A/C.6/64/SR.20, para. 28.
[71] A/C.6/64/SR.20, para. 39.
[72] A/C.6/65/SR.23, para. 63.
[73] A/C.6/65/SR.25, para. 48.
[74] A/C.6/64/SR.22, para. 11.
[75] A/C.6/64/SR.20, para. 39.
[76] A/C.6/64/SR.22, para. 80.
[77] A/C.6/64/SR.20, paras. 39-40.
[78] A/C.6/64/SR.20, para. 22.
[79] A/C.6/64/SR.20, para. 45.
[80] A/C.6/64/SR.21, para. 82.

an approach and, along with Switzerland[81] and Spain,[82] expressed appreciation for the Commission's emphasis, in draft article 1 [1], on the protection of the affected persons. France[83] and Sri Lanka[84] called for a clear articulation of the specific rights and obligations of States and those of individuals applicable in disaster situations.

33. Mexico[85] and Ireland[86] preferred that the scope *ratione personae* remained focused only on natural persons affected by disasters as compared to legal persons. China[87] and the Islamic Republic of Iran[88] expressed the view that the draft articles should focus exclusively on States. The United Kingdom,[89] the Russian Federation[90] and Ireland[91] supported the Commission's focus on the activities of States before considering other actors. Portugal[92] emphasized the important role of non-State actors and IFRC[93] observed that the lack of clearly articulated rules in respect to civil society actors had been a major problem in international disaster relief. The European Union,[94] while welcoming the applicability of the draft articles to international organizations and other humanitarian actors, suggested an express reference to regional integration organizations in either the draft articles or the accompanying commentary.

34. The importance of covering all phases of disaster *ratione temporis*, including the prevention phase, was underlined by Chile,[95] the Russian Federation,[96] Poland,[97] Ghana,[98] Germany,[99] Thailand,[100] Cuba,[101] the European Union,[102] the Nordic States,[103] Israel,[104] China[105] and the 12 Pacific small island developing States.[106] Malaysia[107] suggested that the phrase "disaster" in draft article 1 [1] should include, by implication, the pre-disaster phase. The Council of Europe supported the consideration of the entire disaster cycle (preparation, emergency response and

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[81] A/C.6/65/SR.22, para. 36.
[82] A/C.6/69/SR.21, para. 39.
[83] A/C.6/64/SR.21, para. 19.
[84] A/C.6/64/SR.21, para. 53.
[85] Comments submitted in writing, 5 November 2008.
[86] A/C.6/65/SR.24, para. 53, and A/C.6/69/SR.19, para. 173.
[87] A/C.6/64/SR.20, para. 22.
[88] A/C.6/65/SR.24, para. 36.
[89] A/C.6/64/SR.20, para. 38.
[90] A/C.6/64/SR.20, para. 46.
[91] A/C.6/64/SR.22, para. 14.
[92] A/C.6/64/SR.21, para. 82.
[93] A/C.6/65/SR.25, para. 47.
[94] A/C.6/66/SR.21, para. 57, and A/C.6/67/SR.18, para. 73.
[95] A/C.6/64/SR.20, para. 28.
[96] A/C.6/64/SR.20, para. 46.
[97] A/C.6/64/SR.21, para. 75; A/C.6/65/SR.23, para. 99; and A/C.6/68/SR.24, para. 106.
[98] A/C.6/64/SR.22, paras. 9 and 11.
[99] Comments submitted in writing, 26 February 2009.
[100] A/C.6/65/SR.23, para. 71.
[101] A/C.6/65/SR.23, para. 94; A/C.6/68/SR.25, para. 67; and A/C.6/69/SR.21, para. 53. See also comments submitted in writing, 5 January 2011.
[102] A/C.6/68/SR.23, para. 30.
[103] A/C.6/68/SR.23, para. 39.
[104] A/C.6/68/SR.25, para. 75.
[105] A/C.6/68/SR.26, para. 11.
[106] A/C.6/68/SR.25, para. 84, and A/C.6/69/SR.20, para. 3.
[107] A/C.6/64/SR.21, para. 38.

recovery).[108] Ireland[109] expressed its support for a flexible scope *ratione loci* that was not limited to activities in the arena of the disaster but also encompassed activities within assisting and transit States.[110]

2. Comments and observations received in response to the request of the International Law Commission

35. Qatar proposed adding the phrase "and other similar events", at the end of the draft article.

36. IOM suggested that it be recalled in the commentary that States had the obligation to protect all persons present on their territory, irrespective not only of nationality but also of legal status. It also was of the view that the focus on the rights and obligations of States in relation to one another, and to a lesser extent on the rights of individuals, was not justified in the light of both the topic of the protection of persons in the event of disasters and the contemporary recognition of the importance of the protection of human rights in disaster situations. The draft articles represented an important opportunity to clarify how the human rights framework applied in the context of disasters. IOM made further suggestions for drafting improvements to the commentary.

3. Recommendation of the Special Rapporteur

37. The Special Rapporteur recommends that draft article 1 [1], as adopted on first reading, be referred to the Drafting Committee. The definition of "disaster" in draft article 3 [3], as adopted on first reading, being all-encompassing, there is no need to add the specification "and other similar events" at the end of draft article 1 [1].

C. Draft article 2 [2]: Purpose

> **The purpose of the present draft articles is to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.**

1. Comments and observations made prior to the adoption of the first reading draft

38. Draft article 2 [2], on the purpose of the draft articles, was discussed in the Sixth Committee at the sixty-fourth, sixty-fifth and at the sixty-seventh to sixty-ninth sessions of the General Assembly. The Nordic States,[111] the Russian Federation[112] and Ireland[113] supported the draft article's formulation.

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[108] Comments submitted in writing, 25 November 2014.

[109] A/C.6/65/SR.24, para. 53.

[110] The inclusion of a provision on transit States, also in draft article 4 (use of terms), was proposed by Ecuador. See below, under that article, its written comments and observations of 11 February 2015.

[111] A/C.6/64/SR.20, para. 8.

[112] A/C.6/64/SR.20, para. 45.

[113] A/C.6/64/SR.22, para. 14.

39. In considering a rights-based approach versus a needs-based approach, the Nordic States,[114] Austria,[115] the Russian Federation,[116] Spain,[117] Thailand,[118] France,[119] Slovenia,[120] Poland,[121] Ireland,[122] New Zealand,[123] the European Union[124] and IFRC[125] expressed their satisfaction with the balance the Commission struck by emphasizing the importance of meeting the victims' needs while affirming their entitlement to full respect for their rights. The Netherlands,[126] the United States,[127] the United Kingdom,[128] Myanmar,[129] Malaysia,[130] the Islamic Republic of Iran[131] and Israel[132] doubted the practical value of a rights-based approach and emphasized the importance of taking into account the victims' needs in disaster situations. Conversely, Portugal,[133] Greece[134] and Romania[135] supported a rights-based approach. China[136] and Japan[137] expressed the need to clarify the content of the rights-based approach. Austria,[138] the Islamic Republic of Iran,[139] Pakistan[140] and Spain[141] pointed to the need to take into account the rights and obligations of States as well. Chile,[142] the Russian Federation[143] and Thailand[144] recalled the importance of referring to all categories of human rights, including economic, social and cultural rights.

40. With regard to the draft article's reference to an "adequate and effective" response to disasters, France[145] and El Salvador[146] emphasized the importance of requiring an "effective" response. El Salvador[147] also noted that the word "effective"

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[114] A/C.6/64/SR.20, para. 8.
[115] A/C.6/64/SR.20, para. 11.
[116] A/C.6/64/SR.20, para. 45.
[117] A/C.6/64/SR.20, para. 49.
[118] A/C.6/64/SR.21, para. 14.
[119] A/C.6/64/SR.21, para. 21.
[120] A/C.6/64/SR.21, para. 68.
[121] A/C.6/64/SR.21, para. 74.
[122] A/C.6/69/SR.19, para. 172.
[123] A/C.6/64/SR.22, para. 71.
[124] A/C.6/69/SR.19, para. 72.
[125] A/C.6/64/SR.22, para. 30.
[126] A/C.6/64/SR.21, para. 90.
[127] A/C.6/64/SR.21, para. 101, and A/C.6/65/SR.25, para. 15.
[128] A/C.6/64/SR.20, para. 38, and A/C.6/67/SR.19, para. 66.
[129] A/C.6/64/SR.21, para. 2.
[130] A/C.6/64/SR.21, para. 38.
[131] A/C.6/64/SR.22, para. 81.
[132] A/C.6/64/SR.23, para. 40.
[133] A/C.6/64/SR.21, para. 82.
[134] A/C.6/64/SR.21, para. 45.
[135] A/C.6/64/SR.22, para. 24.
[136] A/C.6/64/SR.20, para. 21.
[137] A/C.6/64/SR.23, para. 27.
[138] A/C.6/64/SR.20, para. 11.
[139] A/C.6/64/SR.22, para. 81, and A/C.6/65/SR.24, para. 36.
[140] Statement of 29 October 2010, 24th meeting, sixty-fifth session of the General Assembly.
[141] A/C.6/65/SR.24, para. 87.
[142] A/C.6/64/SR.20, para. 28.
[143] A/C.6/64/SR.20, para. 45.
[144] A/C.6/64/SR.21, para. 14.
[145] A/C.6/64/SR.21, para. 22.
[146] A/C.6/65/SR.23, para. 63.
[147] Ibid.

entailed a temporal aspect. While Malaysia[148] suggested clarifying the terms "adequate and effective", the use of the term "effective" was questioned by the delegation of the Russian Federation, [149] which was concerned that it could imply an obligation by the affected State to accept the assistance of other actors. The United Kingdom[150] proposed replacing the term "adequate and effective" with "timely and effective".

41. France[151] was of the view that the phrase "essential needs" required clarification. El Salvador[152] endorsed the reference to "full respect for their rights", while France[153] considered that the usefulness of the draft articles would depend on the extent to which they ensured respect for those rights. Mexico[154] suggested adding the phrase "including disaster risk reduction measures" at the end of the draft article. Cuba proposed a similar formulation to what was later adopted as draft article 2 [2], but including an additional reference to "all phases of the disaster". [155]

2. Comments and observations received in response to the request of the International Law Commission

42. Austria observed that the draft article did not cover disaster risk reduction, which was addressed in draft articles 10 [5 ter] and 11 [16].

43. Qatar proposed including a reference to the "unrestricted respect" for the rights of the persons concerned.

44. The European Union reiterated its support for the balance struck in the provision and agreed that the "needs-based" and "rights-based" approaches were not exclusive, but complementary.

45. IOM suggested adding a paragraph in the commentary acknowledging that those displaced by a disaster were also considered to be directly affected. It also observed that the definition of "persons concerned" could also be influenced by the definition of "disaster". Understanding disaster as a consequence of a hazard would allow for the inclusion of a broader range of affected persons, including those displaced not only by the actual hazard but also in the aftermath of the hazard owing to the general level of disruption in the functioning of the community, those for whom the disaster could not be singled out as the only cause of displacement and the host communities affected by the inflow of displaced persons. It also proposed that, in addition to persons directly affected, the commentary could also refer to persons likely to be affected. IOM also found it difficult to justify the exclusion from the scope of application of the draft articles of the economic losses of those who were located elsewhere but might be affected by a disaster. In its view, the impact on persons and not necessarily the physical presence of the person in the affected area should be the guiding criterion. While noting the Commission's choice not to include a list of rights to avoid any *a contrario* interpretation, IOM

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[148] A/C.6/64/SR.21, para. 38.
[149] A/C.6/64/SR.20, para. 46.
[150] A/C.6/64/SR.20, para. 39.
[151] A/C.6/64/SR.21, para. 21.
[152] A/C.6/65/SR.23, para. 63.
[153] A/C.6/64/SR.21, para. 22.
[154] A/C.6/68/SR.25, para. 11.
[155] Comments submitted in writing, 5 January 2011.

maintained that, for the work of international organizations and their advocacy role, it would be beneficial to have a non-exhaustive list of rights that were relevant.

3. Recommendation of the Special Rapporteur

46. The Special Rapporteur recommends that draft article 2 [2], as adopted on first reading, be referred to the Drafting Committee. The commonly used term "full" being an all-encompassing one, there is no need to replace it with or add to it the narrower term "unrestricted". Besides, although the term "response" is not necessarily synonymous with "relief", its use mainly denotes the measures that are taken following the occurrence of a disaster, without thereby excluding measures taken to prevent or diminish the risk of such an occurrence. With that understanding, there is no need to make a specific reference in the text to "disaster risk reduction".

D. Draft article 3 [3]: Definition of disaster

> "Disaster" means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

1. Comments and observations made prior to the adoption of the first reading draft

47. Draft article 3 [3] was discussed in the Sixth Committee at the sixty-fourth, sixty-fifth and sixty-ninth sessions of the General Assembly. The Nordic States,[156] China,[157] Chile,[158] Thailand,[159] Ireland[160] and El Salvador[161] supported the general approach taken by the Commission of not drawing a strict distinction between natural and man-made disasters, which was considered artificial and difficult to sustain in practice. Austria, while agreeing in principle, noted that the need for such a distinction could arise in connection with possible obligations resulting from unlawful acts that caused disasters.[162] France, while considering the definition to be sufficiently general, nonetheless recommended that it be made clear that the definition was provided only for purposes of the draft articles.[163] Conversely, Malaysia expressed a preference for a definition of disaster limited to natural disasters.[164]

48. Poland[165] was of the view that the definition in the draft articles should be guided by that found in the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, of 1998 (Tampere Convention).[166] Portugal, however, doubted the relevance of the

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[156] A/C.6/64/SR.20, para. 7.
[157] A/C.6/64/SR.20, para. 23.
[158] A/C.6/64/SR.20, para. 29.
[159] A/C.6/64/SR.21, para. 15.
[160] A/C.6/64/SR.22, para. 17
[161] A/C.6/65/SR.23, para. 64.
[162] A/C.6/64/SR.20, para. 13.
[163] A/C.6/64/SR.21, para. 23.
[164] A/C.6/64/SR.21, para. 38.
[165] A/C.6/64/SR.21, para. 73.
[166] United Nations, *Treaty Series*, vol. 2296, p. 5.

definition in the Tampere Convention owing to a difference in the scope of application of that Convention.[167]

49. Austria[168] and Ireland[169] supported the inclusion within the definition of "disaster" both those with a transboundary effect and those without such effect.

50. The Russian Federation expressed support for the inclusion of the possibility of a disaster being constituted of a chain of events.[170] France agreed that, for purposes of the draft articles, a "disaster" meant a relatively massive and serious event.[171] India welcomed the inclusion of the reference to "calamitous event" by way of emphasizing the grave and exceptional situations to which the draft articles apply.[172]

51. Thailand suggested that the phrase "inter alia" be inserted prior to "widespread loss of life" in order to track the explanation given in the commentary that the three possible outcomes envisaged in the draft article were not exclusive and had been included to provide guidance.[173]

52. Austria supported the inclusion within the definition of not only human loss but also material and environmental loss, and recommended that consideration be given to whether the different types of effects of disasters similarly implied different types of obligations.[174] Malaysia,[175] Greece[176] and Poland[177] supported the inclusion of the reference to both material and environmental damage. Ireland suggested that an event causing "large-scale material or environmental damage" alone, without necessarily having an impact on human life, should be sufficient to trigger the applicability of the draft articles.[178]

53. Austria queried whether the requirement of serious disruption of the functioning of society was appropriate, since it could not be excluded that proof of the functioning of the society in the situation of a disaster was evidenced precisely through the taking of relief measures in accordance with well-prepared emergency plans. Disasters arising in such circumstances would seemingly be excluded from the scope of the definition.[179] Austria proposed that the definition be reformulated to refer to "a situation of great distress" or "a sudden event", so as to include a broader range of disasters, including those that did not seriously disrupt the society of an entire State.[180] Greece was also of the view that the requirement of serious disruption excessively narrowed the scope of the draft articles, and recommended instead that a broader definition be adopted.[181] Switzerland, while supporting the

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[167] A/C.6/64/SR.21, para. 84.
[168] A/C.6/64/SR.20, para. 16.
[169] A/C.6/64/SR.22, para. 17.
[170] A/C.6/64/SR.20, para. 47.
[171] A/C.6/64/SR.21, para. 23.
[172] A/C.6/65/SR.25, para. 34.
[173] A/C.6/65/SR.23, para. 72.
[174] A/C.6/64/SR.20, para. 16.
[175] A/C.6/64/SR.21, para. 38.
[176] A/C.6/64/SR.21, para. 45.
[177] A/C.6/64/SR.21, para. 73.
[178] A/C.6/64/SR.22, para. 17.
[179] A/C.6/64/SR.20, para. 14.
[180] Ibid., para. 15.
[181] A/C.6/64/SR.21, para. 45. See also Portugal, A/C.6/64/SR.21, para. 84 ("the definition of disaster should be as broad as possible").

criterion in principle, expressed the concern that the application of the requirement of widespread loss of life in, for example, a disaster occurring in a remote area, in circumstances where the functioning of society was not disrupted, would result in the inapplicability of the draft articles.[182] Thailand expressed a similar view when it indicated that the requirement of serious disruption of the functioning of society set too high a threshold for the application of the draft articles.[183] Ireland was of the view that the concept of "society" could exclude a disaster affecting a region or regions within a State but not a State as a whole, and that it was not clear whether the concept adequately captured circumstances where a disaster had effects across a border.[184]

54. China recommended that reference also be made to "exceeding local capacity and resources for disaster relief", so as to allow flexibility for States with varying capacities for disaster relief.[185] Venezuela supported the inclusion of the criterion of the impact of the event having exceeded the affected State's response capacity in order to qualify as a disaster for the purposes of the draft articles.[186]

55. The Russian Federation[187] and Venezuela[188] expressed support for the reference to a disaster being defined in terms of its effects rather than in terms of the factors causing it.

56. Spain supported merging draft article 3 [3] into draft article 4 on use of terms.[189]

2. Comments and observations received in response to the request of the International Law Commission

57. Austria queried the use of the term "calamitous", which it considered to be redundant or even confusing. It noted further that the definition seemed to exclude situations resulting from the outbreak of an infectious disease, such as an epidemic or pandemic, that could not always be traced back to a specific event. It also questioned whether the element regarding the disruption of the functioning of society was appropriate. In its view, it was doubtful whether an earthquake, an avalanche, a flood or a tsunami necessarily met the threshold of "seriously disrupting the functioning of society". It accordingly preferred a broader definition, which included all disasters, even if they did not seriously disrupt the society of an entire State.

58. The Czech Republic expressed the view that the definition was well balanced. At the same time, it called on the Commission to elaborate in the commentary on the definition of "seriously disrupting the functioning of society" by providing examples, since such a general definition posed difficulties in determining the threshold that would trigger the application of the draft articles.

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[182] A/C.6/65/SR.22, para. 36.
[183] A/C.6/65/SR.23, para. 72.
[184] A/C.6/64/SR.22, para. 17; A/C.6/65/SR.24, para. 54; and A/C.6/69/SR.19, para. 173.
[185] A/C.6/64/SR.20, para. 23.
[186] A/C.6/64/SR.21, para. 41.
[187] A/C.6/64/SR.20, para. 47.
[188] A/C.6/64/SR.21, para. 41.
[189] A/C.6/69/SR.21, para. 41.

59. Cuba recommended that the definition be aligned with that utilized by the United Nations Office for Disaster Risk Reduction, which defined a "disaster" as "a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources".[190]

60. Ecuador supported the inclusion of an express reference to causal factors, so that the definition took a holistic approach to risk management.

61. Germany proposed including a reference to "prolonged process" to cover slow-onset disasters such as droughts.

62. The Netherlands reiterated its preference to have draft articles 3 [3] and 4 merged.

63. The European Union was of the view that the formulation of the provision made it difficult to determine the threshold for triggering the application of the draft articles, which would be problematic if they were to become a legally binding instrument. It noted further that, while the definition was drawn from that in the Tampere Convention, such a definition did not necessarily correspond to other definitions under international law, such as those adopted within the European Union.

64. ICRC expressed its concern that the definition no longer expressly excluded situations of armed conflict. It maintained that such an approach would result in overlap and contradiction between the rules of international humanitarian law and the draft articles, creating confusion and potential conflicts of norms should the draft articles become an international binding instrument. However, the objective that the draft articles would not contradict the rules of international humanitarian law could be achieved either by adding such an exclusion to draft article 3 [3] or by ensuring that the commentary of draft article 21 [4] faithfully reflected the black-letter rule contained in the corresponding draft article.

65. IFRC recommended that the commentary to draft article 3 [3] mention that the definition of disaster could apply equally to sudden-onset events, such as an earthquake or tsunami, and to slow-onset events, such as drought or gradual flooding. In addition, the commentary could point out that "great human suffering and distress" might also be occasioned by non-fatal injuries, disease or other health problems caused by a disaster, and not only by displacement.

66. IOM proposed the inclusion of a reference to displacement in the definition of disaster so as to provide more visibility to the issue of human mobility, and by way of indicating that, in complying with the other obligations set forth in the draft articles, States should also always take into account the displacement dimension. IOM further called for greater clarity as to the use of the term "calamitous" in establishing the threshold for the application of the draft articles. It suggested that a definition of "calamitous" be included in the commentary, and that it include small-scale events that might, nonetheless, cause such disastrous consequences.

67. The United Nations Office for Disaster Risk Reduction was of the view that the definition set a rather high threshold that excluded small-scale disasters, which

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[190] United Nations Office for Disaster Risk Reduction, 2009 *UNISDR Terminology on Disaster Risk Reduction*, May 2009, Geneva.

were covered by the Sendai Framework. It observed that research and experience had indicated that small-scale disasters caused heavy losses, including in economic terms, thereby negatively affecting resilience, exacerbating existing vulnerabilities and contributing to severe setbacks in human development. Accordingly, it proposed that the Commission reconsider the qualifiers "widespread", "great" and "large-scale" while adding the word "economic" after "environmental", and adjusting the commentary accordingly.

3. Recommendation of the Special Rapporteur

68. Since the draft articles are intended to establish the international legal framework to ensure that persons are protected in the event of a disaster, the definition of "disaster" is crucial for the economy of the whole draft, and therefore must be embodied in an autonomous, separate provision. Its meaning cannot be assimilated to that attributed in draft article 4 to derivative terms as used for the purposes of the draft articles.

69. As indicated above in relation to draft article 1 [1], the definition of "disaster" in draft article 3 [3] is an all-encompassing one. As such, it covers not only natural but also human-made disasters, sudden-onset as well as slow-onset and big-scale and small-scale events. While a causal relationship is established between the event, which is qualified as "calamitous" for emphasis, and its consequences, the focus is not on the former but on the latter. A calamitous event, regardless of its nature and magnitude, becomes a disaster for the purposes of the draft articles because of the effects it produces, as described in draft article 3 [3]. The resulting "[disruption of] the functioning of society" envisages not only the whole nation but also regions and individual communities within. In the light of the foregoing, the Special Rapporteur sees no need to change the placing of draft article 3 [3], nor alter its drafting except in two respects. To take account of a relatively recent and growing socioeconomic phenomenon affecting individuals and nations throughout the globe, the Special Rapporteur considers it opportune to add the terms "displacement" and "economic" to the text of the draft article.

70. The Special Rapporteur, therefore, recommends that, with those two additions, the first reading draft article 3 [3] be referred to the Drafting Committee, to read as follows:

Draft article 3
Definition of disaster

"Disaster" means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, displacement, or large-scale material, economic or environmental damage, thereby seriously disrupting the functioning of society.

E. Draft article 4: Use of terms

For the purposes of the present draft articles:

(a) "affected State" means the State in the territory or otherwise under the jurisdiction or control of which persons, property or the environment are affected by a disaster;

(b) "assisting State" means a State providing assistance to an affected State at its request or with its consent;

(c) "other assisting actor" means a competent intergovernmental organization, or a relevant non-governmental organization or any other entity or individual external to the affected State, providing assistance to that State at its request or with its consent;

(d) "external assistance" means relief personnel, equipment and goods, and services provided to an affected State by assisting States or other assisting actors for disaster relief assistance or disaster risk reduction;

(e) "relief personnel" means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance or disaster risk reduction;

(f) "equipment and goods" means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles and other objects for disaster relief assistance or disaster risk reduction.

1. Comments and observations made prior to the adoption of the first reading draft

71. Draft article 4, on the use of terms, was discussed in the Sixth Committee primarily at the sixty-ninth session of the General Assembly. On that occasion, the Netherlands expressed general support for the provision.[191] The Netherlands[192] and Spain[193] further recommended that it be amalgamated with draft article 3 [3], on the definition of "disaster".

72. Finland, on behalf of the Nordic States,[194] and Ireland[195] and India[196] expressed support for the definition of "affected States" in subparagraph (a), which also covered complex situations of de facto control that a State could exercise over a territory other than its own.

73. With regard to subparagraph (b), on "assisting State", Austria was of the view that the phrase "at its request or with its consent" was unnecessary since the existence of such conditions would be a result of the application of the substantive provisions of the draft articles and not of the definition.[197] South Africa preferred retaining the reference to "consent" so as to clarify that the affected State's unequivocal consent had to be a prerequisite to any form of external assistance.[198]

74. With regard to subparagraph (c), on "other assisting actor", the European Union recommended that the commentary to the provision indicate that the term "competent intergovernmental organization" also included regional international organizations.[199] Finland, on behalf of the Nordic States, concurred with the view

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[191] A/C.6/69/SR.20, para. 12.
[192] Ibid.
[193] A/C.6/69/SR.21, para. 41.
[194] A/C.6/69/SR.19, para. 78.
[195] A/C.6/69/SR.19, para. 174.
[196] A/C.6/69/SR.21, para. 70.
[197] A/C.6/69/SR.19, para. 122.
[198] A/C.6/69/SR.20, para. 102.
[199] A/C.6/69/SR.19, para. 75. See also Spain, A/C.6/69/SR.21, para. 40.

that a State could be qualified as an "assisting State" only once the assistance was being or had been provided.[200] Finland, on behalf of the Nordic States, indicated that it was also important to recognize the role of diverse types of "other assisting actors" in providing assistance, including competent intergovernmental, regional and relevant non-governmental organizations or any other individuals or entities, such as the Red Cross and the Red Crescent.[201] Portugal, while supporting the formulation of the provision, expressed doubts regarding its interaction with other draft articles, some of which made no reference to other entities or individuals.[202] Thailand was of the view that the notion of "other assisting actor" should not include any domestic actors who offered assistance for the purposes of disaster relief or disaster risk reduction.[203]

75. With regard to subparagraph (d), on "external assistance", India recommended the inclusion of a reference to the "request or consent" of the affected State, as the legal basis for the provision of such assistance.[204]

76. The European Union[205] and Switzerland[206] pointed to the fact that the definition of "relief personnel", in subparagraph (e), to the extent that it envisaged not only civilian but also military personnel, deviated from the Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief (Oslo Guidelines),[207] and the Guidelines on the use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies,[208] which specify that international military assets should be used as a last resort, when civilian alternatives are exhausted. Germany proposed the insertion of the phrase "in exceptional cases in which civilian assistance cannot sufficiently be provided".[209] Austria observed that the definition had to be reconciled with State practice since military personnel remained under the full command of the assisting State, irrespective of the operational control of the affected State, and accordingly that such relief operations remained attributable to the assisting State.[210] Malaysia expressed concerns regarding the provision since armed presence in a State could be interpreted as an encroachment of its sovereignty, and indicated that, if the reference were kept, it had to be made clear that the affected State would retain overall direction, control, coordination and supervision of assistance within its territory.[211] India suggested that it be made clear that the sending of personnel, especially military personnel or equipment, as a form of external assistance required the prior

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[200] A/C.6/69/SR.19, para. 78.

[201] A/C.6/69/SR.19, para. 78.

[202] A/C.6/69/SR.19, para. 157.

[203] A/C.6/69/SR.20, para. 69.

[204] A/C.6/69/SR.21, para. 70.

[205] Statement of 27 October 2014, 19th meeting, sixty-ninth session of the General Assembly.

[206] A/C.6/69/SR.19, para. 130.

[207] Guidelines on the Use of Military and Civil Defence Assets In Disaster Relief — "Oslo Guidelines", Rev.1, 27 November 2006.

[208] Guidelines on the use of military and civil defence assets to support United Nations humanitarian activities in complex emergencies — "MCDA Guidelines", Rev. 1, January 2006, Office for the Coordination of Humanitarian Affairs, United Nations.

[209] Ibid.

[210] A/C.6/69/SR.19, para. 122.

[211] A/C.6/69/SR.21, para. 49.

express and informed "agreement or consent" of the affected State, and that such consent could not be presumed by the assisting States or entities.[212]

77. The European Union proposed that the provision be redrafted to read that relief personnel "means civilian and military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance or disaster risk reduction; military assets should be used only where there is no comparable civilian alternative and only the use of military assets can meet a critical humanitarian need".[213]

78. With regard to subparagraph (f), on the definition of "equipment and goods", India suggested that it be clarified that the legal basis for the provision of such assistance was the "request or consent" of the affected State.[214]

79. France further recommended that a definition of the notion of "humanitarian response" be included.[215]

2. Comments and observations received in response to the request of the International Law Commission

80. Austria reiterated its doubt that the definitions of "assisting State" and "other assisting actor" in subparagraphs (a) and (b) needed the qualifier "at its request or with its consent".

81. The Czech Republic suggested that, in the context of the definition of "affected State" in subparagraph (a), the Commission could recommend criteria that might be applicable in situations when two or more States might be regarded as "affected States". The Netherlands agreed that the issue of consent of the affected State in situations where there might be multiple affected States merited further attention. The Netherlands also supported the inclusion of the phrase "or otherwise under the jurisdiction or control" in subparagraph (a), which broadened the scope of the term "affected State".

82. The Office for the Coordination of Humanitarian Affairs expressed support for the definition of the term "affected State" in subparagraph (a) insofar as it emphasized the primary role and responsibility of the State in whose territory the disaster occurred to protect persons, property and the environment from the effects of disaster. It also supported the inclusion of situations in which a State exercised de facto control over a territory other than its own. At the same time, it considered it useful to clarify in the commentary that the term "affected State" was not intended to include a State that had jurisdiction under international law over individual persons affected by a disaster outside the State's territory.

83. With regard to subparagraph (c), on "other assisting actor", the European Union reiterated its request for the inclusion of a reference to "regional integration organizations", either in the text or its accompanying commentary.

84. Regarding the definition of "external assistance" in subparagraph (d), Cuba proposed the inclusion of the phrase "at the request or with the consent of the

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[212] A/C.6/69/SR.21, para. 70.

[213] Statement of 27 October 2014, 19th meeting, sixty-ninth session of the General Assembly.

[214] A/C.6/69/SR.21, para. 70.

[215] A/C.6/65/SR.23, para. 84.

affected State or as previously agreed through cooperation and/or collaboration" at the end. IFRC suggested including "financial support".

85. With regard to subparagraph (e), on the definition of "relief personnel", Austria reiterated its view that the definition needed to be reconciled with State practice, since military personnel remained under the full command of the assisting State irrespective of the operational control of the affected State. Accordingly, such relief operations remained attributable to the assisting State. The Czech Republic, Germany, the European Union and the Office for the Coordination of Humanitarian Affairs recommended that the Commission take into account the Oslo Guidelines, which specify that international military assets are to be used only as a last resort when civilian alternatives are exhausted. The Netherlands and the European Union called for greater coherence in the terminology between draft articles 4 and 17 [14].

86. IFRC recommended including "telecommunications equipment" and "medicines" within the list of goods and equipment in subparagraph (f).

87. The United Nations Office for Disaster Risk Reduction recommended deleting the references to "disaster risk reduction" in subparagraphs (d), (e) and (f), as they were more relevant to the provision of relief than applicable for the purpose of disaster risk reduction.

88. Ecuador proposed the inclusion of a definition of "transit States". Cuba requested that the Commission reconsider its decision not to include a definition of "disaster risk reduction", which could be based on that adopted by the United Nations Office for Disaster Risk Reduction. The Office for the Coordination of Humanitarian Affairs proposed the inclusion of a definition of "services". The Netherlands concurred with the decision not to include definitions for "relevant non-governmental organization" and "disaster risk reduction".

3. Recommendation of the Special Rapporteur

89. The Special Rapporteur is of the view that no changes are called for in the English text of subparagraphs (a), (b) and (c) of draft article 4. When more than one State is struck by the same disaster, each becomes an "affected State", as defined in subparagraph (a), with the consequences for each such State which attach to that characterization throughout the draft. The phrase "at [the affected State's] request or with its consent" in subparagraphs (b) and (c) reflects a fundamental tenet of the draft as a whole and reinforces the delicate balance it has achieved between the principles of sovereignty and non-intervention on the one hand and the protection of the individual on the other. In subparagraph (c), the French equivalent of the word "relevant", which at present is *pertinentes*, might be replaced by *appropriées*.

90. With regard to subparagraphs (d), (e) and (f), the Special Rapporteur agrees that, given the main focus of the draft as a whole, as explained above under draft article 2 [2], there is no need to maintain in all three subparagraphs the reference to "or disaster risk reduction". With respect to subparagraph (d), there is also no need to add the phrase "at the request or with the consent of the affected State". Such an element is already imported into that subparagraph when it expressly refers to "assisting States or other assisting actors", whose definitions in subparagraphs (b) and (c) already include the suggested phrase.

91. As far as subparagraph (e) is concerned, the Special Rapporteur concurs with the suggestions to take account of the Oslo Guidelines in the text. That can be done

by inserting at the end of the subparagraph the phrase "military assets shall be used only where there is no comparable civilian alternative to meet a critical humanitarian need".

92. The Special Rapporteur also agrees that subparagraph (f) would gain from the addition of an express reference to "telecommunications equipment". As for the term "medicines", it is already covered in the text under "medical supplies".

93. For the Special Rapporteur, there is no room for the inclusion in draft article 4 of a definition of "transit State" since that term is not used in the draft as a whole. The same can be said of the word "services", which only appears as an element of the definition of the term "external assistance" in subparagraph (d).

94. In the light of the foregoing, the Special Rapporteur recommends that, with the indicated changes, the first reading text of draft article 4 be referred to the Drafting Committee, to read as follows:

Draft article 4
Use of terms

For the purposes of the present draft articles:

(a) "affected State" means the State in the territory or otherwise under the jurisdiction or control of which persons, property or the environment are affected by a disaster;

(b) "assisting State" means a State providing assistance to an affected State at its request or with its consent;

(c) "other assisting actor" means a competent intergovernmental organization, or a relevant non-governmental organization or any other entity or individual external to the affected State, providing assistance to that State at its request or with its consent;

(d) "external assistance" means relief personnel, equipment and goods and services provided to an affected State by assisting States or other assisting actors for disaster relief assistance;

(e) "relief personnel" means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance; military assets shall be used only where there is no comparable civilian alternative to meet a critical humanitarian need;

(f) "equipment and goods" means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles, telecommunications equipment and other objects for disaster relief assistance.

F. Draft article 5 [7]: Human dignity

In responding to disasters, States, competent intergovernmental organizations and relevant non-governmental organizations shall respect and protect the inherent dignity of the human person.

1. Comments and observations made prior to the adoption of the first reading draft

95. Draft article 5 [7] was discussed in the Sixth Committee at the sixty-fifth to sixty-ninth sessions of the General Assembly.

96. The inclusion of draft article 5 [7] in its current form and position was supported by Switzerland,[216] Portugal,[217] Pakistan,[218] Indonesia,[219] Spain,[220] Mexico,[221] Sri Lanka,[222] Colombia,[223] the Czech Republic,[224] Poland,[225] Chile[226] and El Salvador.[227] IFRC also supported the provision, while expressing the hope that subsequent draft articles could provide more specific guidance as to what the notion of "human dignity" meant in practice in terms of the treatment of affected persons.[228] Belarus was of the view that the text remained declarative and somewhat vague.[229]

97. While supporting the inclusion of draft article 5 [7], some States suggested that its wording could be modified. Commenting on the notions of human dignity and human rights, China[230] and the Russian Federation[231] pointed out that the occurrence of a disaster might call for a limitation or a suspension of individual rights, and maintained that the draft articles should include language acknowledging such a possibility. The Russian Federation also requested clarification regarding the persons to whom the obligations deriving from the provision should apply, and emphasized that all actors working to overcome a disaster should take action on the basis of respect for human dignity, and not only those listed in the draft article.[232] France suggested that the reference to non-governmental organizations be preceded by the adjective "appropriate" (*appropriées*) rather than "relevant" (*pertinentes*).[233] Poland was of the view that the inclusion of the pre- and post-disaster phases within the scope of the draft articles called for an amendment to the text of other draft articles, such as draft article 7 [6], which only covered disaster response.[234]

98. The Netherlands mentioned the need to clarify how draft article 5 [7] related to draft articles 7 [6] and 6 [8], concluding that it might be usefully merged with draft article 7 [6], which sets out the humanitarian principles to be followed in disaster response activities.[235] Belarus emphasized the inextricable link between the protection of human dignity and that of human rights, and suggested that draft

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[216] A/C.6/65/SR.22, para. 37.
[217] A/C.6/65/SR.23, para. 11.
[218] A/C.6/65/SR.24, para. 57.
[219] A/C.6/65/SR.24, para. 69.
[220] A/C.6/65/SR.24, para. 87.
[221] A/C.6/65/SR.25, para. 4.
[222] A/C.6/65/SR.26, para. 43.
[223] A/C.6/66/SR.22, para. 26.
[224] A/C.6/69/SR.20, para. 9.
[225] A/C.6/65/SR.23, para. 100, and A/C.6/67/SR.19, para. 73.
[226] Statement of 31 October 2014, 24th meeting, sixty-ninth session of the General Assembly.
[227] Comments submitted in writing, 17 January 2011.
[228] Statement of 29 October 2010, 25th meeting, sixty-fifth session of the General Assembly.
[229] A/C.6/69/SR.20, para. 82.
[230] A/C.6/65/SR.22, para. 64.
[231] A/C.6/65/SR.23, para. 57, and A/C.6/69/SR.19, para. 100.
[232] A/C.6/69/SR.19, para. 98.
[233] A/C.6/68/SR.17, para. 111.
[234] A/C.6/68/SR.24, para. 106.
[235] A/C.6/65/SR.23, para. 44.

article 5 [7] be merged with draft article 6 [8].[236] Pakistan,[237] Indonesia[238] and Mexico[239] considered it useful to preserve the autonomy of draft article 5 [7], and rejected the hypothesis of merging it with other provisions.

99. Ireland suggested that human dignity and human rights were overarching principles that would better be dealt with in a preamble, with the draft articles focusing instead on operational matters.[240] Greece maintained that the draft article should be suitably positioned within the body of the draft articles in the same spirit as the approach taken in connection with the principle of humanity.[241] The Republic of Korea noted that the concepts of human dignity and human rights were key to the whole project and would therefore best be placed at the beginning of the text.[242]

100. Lastly, Hungary expressed the view that draft article 5 [7] should be deleted, as it was not clear whether the principle of human dignity should have an additional meaning beyond human rights.[243]

2. Comments and observations received in response to the request of the International Law Commission

101. Austria expressed the view that the broad wording of the provision imposed the relevant obligation on actors other than those assisting in the case of a disaster.

102. Cuba recommended the addition of the phrase "as well as the domestic laws of the affected State and its sovereign decisions with regard to the assistance offered" at the end of the provision.

103. IFRC considered the emphasis placed on human dignity to be a very positive aspect. In its view, establishing a hard-law basis for the humanitarian principles in disasters would be a very valuable addition to the contemporary international normative framework.

104. While the Office for the Coordination of Humanitarian Affairs supported the inclusion of draft article 5 [7], it noted that, as the provision did not refer to the term "any other entity or individual" found in draft article 4, subparagraph (c), it was preferable to refer to "States and other assisting actors" as defined in draft article 4, subparagraph (c), to ensure that draft article 5 [7] encompassed all relevant actors providing "external assistance".

3. Recommendation of the Special Rapporteur

105. For the Special Rapporteur, the inclusion of "human dignity" in a separate, autonomous provision in the body of the draft, as draft article 5 [7], is a signal achievement of the Commission, extending beyond its work on the protection of persons in the event of disasters. He therefore cannot agree to its deletion and sees no advantage to be gained by merging it with either draft articles 6 [8] or 7 [6], or by transferring its text to the preamble.

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[236] A/C.6/69/SR.20, para. 82.

[237] A/C.6/65/SR.24, para. 57.

[238] A/C.6/65/SR.24, para. 69.

[239] A/C.6/65/SR.25, para. 4.

[240] A/C.6/65/SR.24, para. 55, and A/C.6/66/SR.25, para. 20.

[241] A/C.6/65/SR.22, para. 51.

[242] A/C.6/66/SR.24, para. 82.

[243] A/C.6/65/SR.21, para. 33.

106. Given the nature of the provision, to insert in its text a reference to the duty to respect and protect the domestic law and the sovereign decisions of the affected State would be out of place in draft article 5 [7]. Such a reference is already found elsewhere in the draft articles.

107. The Special Rapporteur, for the sake of coherence throughout the draft, can subscribe to the suggestion to replace the phrase "competent intergovernmental organizations and relevant non-governmental organizations" with "and other assisting actors", a term that, as defined in draft article 4, subparagraph (c), includes those two types of organizations. As a result, the suggestion for a change in the French text of article 5 [7] from *pertinentes* to *appropriées*, which has already been reflected above in connection with draft article 4, subparagraph (c), would become moot.

108. He therefore recommends that, with the indicated change, the first reading text of draft article 5 [7] be referred to the Drafting Committee, to read as follows:

Draft article 5
Human dignity

In responding to disasters, States and other assisting actors shall respect and protect the inherent dignity of the human person.

G. Draft Article 6 [8]: Human rights

Persons affected by disasters are entitled to respect for their human rights.

1. Comments and observations made prior to the adoption of the first reading draft

109. Draft article 6 [8] and the relevance of international human rights law for the draft articles were discussed in the Sixth Committee at the sixty-third and sixty-fifth to sixty-ninth sessions of the General Assembly.

110. Several States expressed support for the Commission's choice to explicitly include respect for human rights among the elements to be considered. Chile stressed that, in its work, the Commission should take into account all pertinent sources of law, including international human rights law.[244] Austria was of the view that the topic was closely related to international human rights law and that certain rights would have a particular bearing.[245] Poland,[246] Jamaica[247] and the Czech Republic[248] also considered respect for human dignity and international human rights as being part of the relevant legal framework.

111. Thailand[249] and the Nordic States[250] pointed to the importance of human rights and of humanitarian principles in informing relief operations. The Czech Republic expressed the view that the provision of assistance should be guided by the interests and needs of persons affected by disasters as well as by the need to protect their

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[244] A/C.6/63/SR.22, para. 15.
[245] A/C.6/63/SR.23, para. 10.
[246] A/C.6/67/SR.19, para. 73.
[247] A/C.6/67/SR.22, para. 9
[248] A/C.6/69/SR.20, para. 9
[249] A/C.6/65/SR.23, para. 70.
[250] A/C.6/67/SR.18, para. 52.

basic human rights.[251] The European Union also made it clear that in humanitarian emergencies, humanitarian principles and human rights should be fully respected.[252] Spain,[253] Brazil,[254] Slovenia[255] and Portugal[256] recognized the importance of the Commission's work in maintaining a balance between State sovereignty and human rights. Slovenia reaffirmed the duty of States affected by natural disasters to preserve the victims' lives and protect their human rights, including the rights to life, food, health, drinking water and housing.[257] According to Chile, the protection of the various human rights directly implicated in the context of disasters, such as the rights to life, food, health and medical care, was a relevant element.[258] Greece further highlighted the importance of the draft article in assessing whether the consent of the affected State had been arbitrarily denied, in accordance with draft article 14 [11].[259]

112. IFRC backed the inclusion of draft article 6 [8], but expressed the hope that subsequent draft articles would provide specific guidance as to what was meant in practice in terms of the treatment of affected persons.[260] Thailand also requested further clarification in the commentary so as to provide concrete indications for action with respect to certain specific rights.[261] Greece suggested the inclusion of a specific reference to the right to water in the commentary.[262]

113. While Sri Lanka[263] and Switzerland[264] expressed their support for the formulation of draft article 6 [8], Japan was of the view that it was too vague, and suggested that it be improved in order to provide useful guidance in individual cases.[265] According to Algeria the wording was too general in the context of disasters and raised questions regarding its scope of application and interpretation.[266] China[267] and the Russian Federation[268] were of the view that the formulation ought to be modified in order to allow flexibility and to reflect the reality that certain rights might be limited or suspended in disaster settings. Greece expressed the concern that draft article 6 [8] could convey the *a contrario* impression that the applicability of international human rights recognized in other texts required confirmation, thereby casting doubt on the provision's interplay with certain well-known provisions of international human rights instruments regarding derogable rights in cases of emergency.[269] El Salvador expressed the view that the reference to "are entitled" was insufficiently categorical, and proposed that the

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[251] A/C.6/69/SR.20, para. 9.
[252] A/C.6/67/SR.18, para. 69.
[253] A/C.6/65/SR.24, para. 87.
[254] A/C.6/65/SR.26, para. 72.
[255] A/C.6/68/SR.21, para. 48.
[256] A/C.6/69/SR.19, para. 156.
[257] A/C.6/66/SR.20, para. 11.
[258] A/C.6/66/SR.24, para. 8.
[259] A/C.6/66/SR.24, para. 25.
[260] Statement of 29 October 2010, 25th meeting, sixty-fifth session of the General Assembly.
[261] A/C.6/66/SR.24, para. 89.
[262] A/C.6/66/SR.24, para. 25.
[263] A/C.6/65/SR.26, para. 43.
[264] Statement of 1 November 2012, 18th meeting, sixty-seventh session of the General Assembly.
[265] A/C.6/65/SR.25, para. 40.
[266] A/C.6/66/SR.25, para. 32.
[267] A/C.6/65/SR.22, para. 64.
[268] A/C.6/65/SR.23, para. 57, and A/C.6/69/SR.19, paras. 99-100.
[269] A/C.6/65/SR.22, para. 52.

provision be reformulated to indicate that such persons "have" certain human rights.[270]

114. The Republic of Korea was of the view that the provision addressed key principles, and therefore suggested that it be moved to the beginning of the text.[271] France[272] and Ireland,[273] while acknowledging the significance of international human rights to the topic, contended that reference to them could be confined to a preamble. Belarus suggested that draft articles 5 [7] and 6 [8] be merged, given the inextricable link between the protection of human dignity and that of human rights.[274]

2. Comments and observations received in response to the request of the International Law Commission

115. Australia welcomed the confirmation that existing human rights conventions continued to apply in disaster situations, and noted that such conventions contained derogable and non-derogable rights, absolute rights and an obligation to take steps, including through international assistance and cooperation, to the maximum of a State's available resources to progressively realize economic, social and cultural rights.

116. Finland, on behalf of the Nordic States, considered the principle outlined in draft article 6 [8] to be highly essential in any humanitarian response. From its perspective, while it was neither necessary nor advisable to employ very specific and restrictive language, some further elaboration of the obligation was necessary. For example, it suggested that the draft article could read: "States must ensure that the rights of affected persons under international human rights law are respected, protected and fulfilled without discrimination."

117. Qatar suggested including a reference to both disasters occurring in conflict situations and in States under occupation.

118. For FAO, the recognition of the human rights of persons affected by disasters was of the utmost importance. It observed that, while the draft article referred only to the obligation to "respect" human rights, a number of international instruments recognized that States had additional obligations, such as the obligation to "protect", "promote" and "fulfil (facilitate)". Moreover, in the context of disaster relief and the enjoyment of the right to food, the recognition of an obligation to "provide" was appropriate.

119. IFRC reiterated its observation that the provision offered no guidance to States or other stakeholders as to how to protect persons in disasters and was therefore not likely to have any impact on their behaviour in operations. It was conscious of the fact that it would be impossible to enunciate every right that could prove relevant in a disaster operation and that mentioning some examples might be misread to imply that rights not enunciated did not apply. Nonetheless, there existed certain rights issues that were of frequent concern in disaster settings and it might be useful to underline them in the draft articles, such as the right to receive humanitarian assistance; the rights of particularly vulnerable groups, such as women, children,

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[270] Comments submitted in writing, 17 January 2011.

[271] A/C.6/66/SR.24, para. 82.

[272] A/C.6/65/SR.23, para. 85.

[273] A/C.6/65/SR.24, para. 55, and A/C.6/66/SR.25, para. 20.

[274] A/C.6/69/SR.20, para. 82.

seniors and disabled persons, to have their special protection and assistance needs taken into account; the right of communities to have a voice in the planning and execution of risk reduction, response and recovery initiatives; and the right of all persons displaced by disasters to non-discriminatory assistance in obtaining durable solutions to their displacement.

120. IOM called for more specific reference in the commentary to applicable non-binding instruments, such as the Guiding Principles on Internal Displacement of the United Nations,[275] as well as the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters of the Inter-Agency Standing Committee.[276] Mentioning those standards in the draft articles would represent an important opportunity to fill the obligations deriving from human rights instruments with more specific content with regard to their application in disaster situations. It also expressed the view that the term "respect" appeared too restrictive to capture the full array of obligations that States and other actors had, and recommended that a reference to the "protection" of rights be added. It also noted that references to specific rights were made in the commentaries to some of the other draft articles. It suggested grouping all such references in the commentary to the present draft article. It further proposed including a reference to the impact of human rights violations, committed through State acts or omissions in the pre- and post-disaster phases, on displacement.

3. Recommendation of the Special Rapporteur

121. Although the topic under consideration concerns the protection of persons in a concrete situation, namely that of a disaster, the Commission's work thereon has not been geared to the development of yet another specialized human rights instrument. International human rights law is an autonomous, well-developed branch of international law, and the Commission has been careful to ensure that no provision of its draft on the present, distinct topic will interfere in the slightest with that existing body of law. To that end, it has limited itself to making in draft article 6 [8] a necessary but general reference to human rights, without entering into hierarchical distinctions grounded on their greater or lesser relevance in cases of disaster. The renvoi to human rights in draft article 6 [8] is to the whole of international human rights law, including in particular its treatment of derogable and non-derogable rights. For the Special Rapporteur, seen from that perspective, the existing reference found in draft article 6 [8] to human rights tout court suffices.

122. It is precisely in order to achieve total conformity between the present draft and international human rights law that the Special Rapporteur can go along with the suggestion to complete the text of draft article 6 [8] by using the standard formula "respect, protect and fulfil" instead of mentioning only "respect". It must be observed that the words "entitled to" found in the text qualify those three verbs and not the noun "human rights".

123. Consequently, the Special Rapporteur recommends that, as amended, the first reading text of draft article 6 [8] be referred to the Drafting Committee, to read as follows:

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[275] Office of the United Nations High Commissioner for Refugees, Guiding Principles on Internal Displacement, 22 July 1998, ADM 1.1, PRL 12.1, PR00/98/109.

[276] Inter-Agency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, The Brookings-Bern Project on Internal Displacement, January 2011.

Draft article 6
Human rights

Persons affected by disasters are entitled to the respect, protection and fulfilment of their human rights.

H. Draft article 7 [6]: Humanitarian principles

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.

1. Comments and observations made prior to the adoption of the first reading draft

124. Draft article 7 [6] on humanitarian principles was discussed in the Sixth Committee at the sixty-fifth to sixty-ninth sessions of the General Assembly. Greece,[277] China,[278] Portugal,[279] New Zealand,[280] the Czech Republic,[281] Monaco,[282] Poland,[283] the Islamic Republic of Iran,[284] Ireland,[285] Pakistan,[286] Indonesia,[287] Spain,[288] the United States,[289] Argentina,[290] Sri Lanka,[291] India,[292] Jamaica,[293] the Russian Federation[294] and IFRC[295] expressed support for the reference to the principles of humanity, neutrality and impartiality in the draft article. New Zealand[296] and Pakistan[297] considered the principles to be directly relevant to the protection of individuals and the facilitation of immediate assistance and relief.

125. The United States,[298] Japan[299] and the Niger[300] called for further analysis and clarification on how the principles related to disaster response specifically. Poland[301] proposed further developing the content of the principles in the commentaries. Ireland[302] noted that draft article 7 [6] should be clearly distinguished from draft articles 5 [7] and 6 [8], on human dignity and human rights, respectively, and the

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[277] A/C.6/65/SR.22, para. 50.
[278] A/C.6/65/SR.22, para. 62.
[279] A/C.6/65/SR.23, para. 11.
[280] A/C.6/65/SR.23, para. 16.
[281] A/C.6/65/SR.23, para. 24, and A/C.6/69/SR.20, para. 9.
[282] A/C.6/65/SR.23, para. 87.
[283] A/C.6/65/SR.23, para. 100, and A/C.6/67/SR.19, para. 73.
[284] A/C.6/65/SR.24, para. 37, and A/C.6/69/SR.21, para. 24.
[285] A/C.6/65/SR.24, para. 55.
[286] A/C.6/65/SR.24, para. 57.
[287] A/C.6/65/SR.24, para. 68.
[288] A/C.6/65/SR.24, para. 87.
[289] A/C.6/65/SR.25, para. 16, and A/C.6/66/SR.21, para. 69.
[290] A/C.6/65/SR.25, para. 25.
[291] A/C.6/65/SR.26, para. 43.
[292] A/C.6/67/SR.20, para. 19.
[293] A/C.6/67/SR.22, para. 9.
[294] A/C.6/69/SR.19, para. 101.
[295] Statement of 29 October 2010, 25th meeting, sixty-fifth session of the General Assembly.
[296] A/C.6/65/SR.23, para. 16.
[297] A/C.6/65/SR.24, para. 57.
[298] A/C.6/65/SR.25, para. 16, and A/C.6/66/SR.21, para. 69.
[299] A/C.6/65/SR.25, para. 40.
[300] A/C.6/66/SR.23, para. 54.
[301] A/C.6/65/SR.23, para. 100.
[302] Statement of 29 October 2010, 24th meeting, sixty-fifth session of the General Assembly.

Netherlands[303] suggested that a distinction should be drawn between draft article 7 [6] on the one hand and draft articles 6 [8] and 8 [5] on human rights and duty to cooperate, respectively, on the other. France[304] suggested changing the title of the draft article to refer to "the principles of humanitarian response" so as to avoid confusion with international humanitarian law.

126. Algeria[305] agreed with the Commission's view that there was no need to ascertain whether the principles constituted general principles of international law. Ireland[306] emphasized the need to identify the legal bases of the principles referred to in draft article 7 [6].

127. With regard to the principle of humanity, the Netherlands[307] agreed with a proposal made in the Commission to distinguish it from the other principles mentioned in the draft article, which in its view were of a different nature. Greece[308] did not doubt the overarching importance of the principle, but observed that it was hardly measurable in legal terms and therefore ought to be moved to a declaratory part of the text, most likely a preamble. France[309] emphasized the need to qualify the content of the principle to clearly distinguish it from the principle of human dignity set out in draft article 5 [7].

128. Regarding the principle of neutrality, Switzerland,[310] the Russian Federation,[311] Monaco,[312] Pakistan,[313] Mexico[314] and China[315] stressed the importance of the principle which ensured the non-political nature of any assistance. Greece,[316] Portugal,[317] Austria,[318] the Netherlands,[319] El Salvador,[320] Estonia,[321] Ireland,[322] the United Kingdom[323] and India[324] expressed doubts as to whether the principle of neutrality was relevant, as it was closely connected to the situation of armed conflict, which was outside the scope of the draft articles. In their view, the principles of impartiality and non-discrimination would cover the same ground in peacetime. In that respect, the Netherlands,[325] Estonia[326] and Chile[327] suggested

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[303] A/C.6/65/SR.23, para. 44.
[304] A/C.6/65/SR.23, para. 84.
[305] A/C.6/66/SR.25, para. 31.
[306] A/C.6/65/SR.24, para. 55.
[307] A/C.6/65/SR.23, para. 44.
[308] A/C.6/65/SR.22, para. 50.
[309] A/C.6/65/SR.23, para. 84.
[310] A/C.6/65/SR.22, para. 37.
[311] A/C.6/65/SR.23, para. 56.
[312] A/C.6/65/SR.23, para. 87.
[313] A/C.6/65/SR.24, para. 57.
[314] A/C.6/65/SR.25, para. 5.
[315] A/C.6/66/SR.23, para. 41.
[316] A/C.6/65/SR.22, para. 50.
[317] A/C.6/65/SR.23, para. 11.
[318] A/C.6/65/SR.23, para. 38.
[319] A/C.6/65/SR.23, para. 44.
[320] Comments submitted in writing, 17 January 2011.
[321] A/C.6/65/SR.23, para. 68.
[322] A/C.6/65/SR.24, para. 55.
[323] A/C.6/65/SR.24, para. 64.
[324] A/C.6/65/SR.25, para. 35.
[325] A/C.6/65/SR.23, para. 44.
[326] A/C.6/65/SR.23, para. 68.
[327] A/C.6/65/SR.26, para. 11.

adding clarifications, including in the commentaries. Austria[328] proposed avoiding the term "principle of neutrality" and only mentioning "impartiality", and referred with approval to the formulation in the resolution on humanitarian assistance adopted by the Institut de droit international in 2003 ("Humanitarian assistance shall be offered and, if accepted, distributed without any discrimination on prohibited grounds, while taking into account the needs of the most vulnerable groups").[329] Chile[330] underlined the need to clarify the scope of the principle of neutrality in relation to the principle of impartiality.

129. With respect to the principle of impartiality, Greece,[331] the Netherlands[332] and Monaco[333] stressed the general recognition that the principle enjoyed in the international community. Pakistan[334] observed that the principle provided a functional framework for relief efforts that excluded political considerations and was guided solely by the needs of the persons affected. Regarding the principle's proportionality component, China[335] believed that disaster response should always be proportionate to the practical needs of regions and peoples as well as to the capacity of affected States. Switzerland[336] emphasized that economic considerations should not, under any circumstances, play a role in the provision of assistance. Ireland[337] doubted whether a reference to the principle of proportionality was useful and Brazil[338] believed that proportionality was best achieved on a case-by-case basis.

130. The Netherlands[339] and IFRC[340] felt that a reference to the principle of non-discrimination might not be necessary, as it was covered by the principle of impartiality. IFRC suggested avoiding confusion by adding the phrase "and in particular" after the word "impartiality".[341] Hungary,[342] Greece[343] and Ireland[344] supported its inclusion in the draft article because it was a valuable and well-accepted legal principle. Indonesia[345] agreed but noted that the principle of non-discrimination was complementary to the other three principles mentioned in draft article 7 [6]. El Salvador sought to distinguish the two principles by noting that the principle of non-discrimination was one of substance, with the goal of protecting persons, while the principle of impartiality related to the process of protection.[346]

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[328] A/C.6/65/SR.23, para. 38.

[329] Resolution on humanitarian assistance, adopted by the Institut de droit international at its Bruges session, 2 September 2003, para. VII (2).

[330] A/C.6/65/SR.26, para. 11.

[331] A/C.6/65/SR.22, para. 50.

[332] A/C.6/65/SR.23, para. 44.

[333] A/C.6/65/SR.23, para. 87.

[334] A/C.6/65/SR.24, para. 57.

[335] A/C.6/65/SR.22, para. 63.

[336] Statement of 27 October 2010, 22nd meeting, sixty-fifth session of the General Assembly.

[337] Statement of 29 October 2010, 24th meeting, sixty-fifth session of the General Assembly.

[338] A/C.6/65/SR.26, para. 72.

[339] A/C.6/65/SR.23, para. 44.

[340] A/C.6/65/SR.25, para. 49.

[341] Ibid.

[342] A/C.6/65/SR.21, para. 33.

[343] A/C.6/65/SR.22, para. 50.

[344] A/C.6/65/SR.24, para. 55.

[345] A/C.6/65/SR.24, para. 68.

[346] Comments submitted in writing, 17 January 2011.

131. France[347] observed that it was important to emphasize that the phrase "while taking into account the needs of the particularly vulnerable" did not imply that the differential treatment of persons who were in different situations was discriminatory. The Niger[348] suggested clarifying the exact meaning of the reference to "the particularly vulnerable" with a view to determining who would assess their needs. El Salvador observed that the clause was of necessity indeterminate since who was to be considered "particularly vulnerable" would depend on each case.[349] The Council of Europe called on the Commission to devote more attention in the draft articles to vulnerable groups.[350]

132. In relation to other relevant principles, the Czech Republic[351] and Thailand[352] proposed including the principle of independence as a fourth core humanitarian principle, supplementing the principles of humanity, neutrality and impartiality. The Russian Federation,[353] Malaysia,[354] India,[355] Indonesia[356] and the Islamic Republic of Iran[357] emphasized the importance of adherence to the principles of sovereignty, territorial integrity and non-interference. Brazil[358] believed that the principle of State sovereignty should be balanced with the protection of human rights. Cuba[359] and the Russian Federation[360] proposed including a reference to the principles of State sovereignty and non-intervention, either in draft article 2 [2] (Russian Federation) or elsewhere (Cuba). South Africa[361] suggested inserting a caveat similar to the one contained in the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),[362] which provides, in article 5 (12), that nothing in that article shall prejudice the principles of sovereignty and territorial integrity of States. Portugal[363] noted that the concern regarding the interference into domestic affairs had already been sufficiently covered by the principle of impartiality.

2. Comments and observations received in response to the request of the International Law Commission

133. Ecuador proposed the addition of a reference to both the "no harm" and "independence" principles.

134. With regard to the neutrality principle, Finland, on behalf of the Nordic States, observed that it was pivotal that the relevant draft articles more clearly distinguish

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[347] A/C.6/65/SR.23, para. 84.

[348] A/C.6/66/SR.23, para. 54.

[349] Comments submitted in writing, 17 January 2011.

[350] Comments submitted in writing, 25 November 2014.

[351] A/C.6/65/SR.23, para. 24.

[352] A/C.6/65/SR.23, para. 70.

[353] A/C.6/65/SR.23, para. 56.

[354] A/C.6/66/SR.24, para. 112.

[355] A/C.6/67/SR.20, para. 19.

[356] A/C.6/68/SR.25, para. 60.

[357] A/C.6/69/SR.21, para. 24.

[358] A/C.6/65/SR.26, para. 72.

[359] A/C.6/65/SR.23, para. 94, and A/C.6/66/SR.24, para. 27.

[360] A/C.6/69/SR.19, para. 101.

[361] Statement of 2 November 2012, 19th meeting, sixty-seventh session of the General Assembly.

[362] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted on 22 October 2009.

[363] Statement of 28 October 2010, 23rd meeting, sixty-fifth session of the General Assembly.

between military personnel and humanitarian response and emphasize the fundamentally civilian character of humanitarian assistance. It also pointed to the protection of vulnerable groups in disasters as another area to be highlighted. It was pleased that the Commission had made explicit reference to the needs of the particularly vulnerable as an important humanitarian principle. At the same time, it maintained that some elaboration could add practical value to the draft article. The Nordic States also emphasized the importance of including a reference to the "no harm" principle.

135. The European Union, while expressing support for the principles enumerated in draft article 7 [6], called on the Commission to also consider inserting a reference to the principle of independence.

136. IFRC expressed the concern that referring to the principles of "impartiality" and "non-discrimination" as separate concepts was confusing since the meaning of "impartiality" was fundamentally based on non-discrimination. It reiterated its recommendation to avoid such confusion by adding the phrase "and in particular" after the word "impartiality".

137. IOM observed that, in the light of the broad scope of application of the draft articles, the phrase "response to disasters" needed to include "pre-disaster risk-reduction" where relevant. The principle of non-discrimination was particularly relevant also in the context of the prevention of disasters. It also welcomed the reference in the commentary to nationality among the grounds for non-discrimination, in the light of the risk of stigmatization and exclusion of non-nationals in disaster response situations.

138. The Office for the Coordination of Humanitarian Affairs expressed support for draft article 7 [6], but indicated that it would also support the inclusion of a reference to the obligation for humanitarian organizations to respect the principle of independence, in accordance with General Assembly resolution 58/114. It further noted that the element of community participation in considering the needs of the particularly vulnerable was missing from the draft article and its commentary.

3. Recommendation of the Special Rapporteur

139. The Special Rapporteur points out that the overarching principles of sovereign equality and non-intervention inform the whole draft, while draft article 7 [6] is concerned with those principles that can be specifically termed "humanitarian principles". The principles enunciated in draft article 7 [6], originally found in international humanitarian law and in the fundamental principles of the Red Cross, are widely used and accepted in the context of response to disasters. The Special Rapporteur finds, therefore, justification in the suggestion to replace the title of the draft article to read "Principles of humanitarian response".

140. As such, they can be usefully supplemented, as has been suggested, by a reference to two other principles with which they are often listed in the relevant instruments: the principles of independence and of no harm. The Special Rapporteur can also accept the suggestion repeatedly made to add "in particular" after "impartiality". He would then, strictly as a matter of drafting, replace the word "particularly" with "most" before "vulnerable".

141. In the light of the foregoing, the Special Rapporteur recommends that, with the indicated changes, the first reading text of draft article 7 [6] be referred to the Drafting Committee, to read as follows:

> **Draft article 7**
> **Principles of humanitarian response**
>
> Response to disasters shall take place in accordance with the principles of humanity, no harm, independence, neutrality and impartiality, in particular on the basis of non-discrimination, while taking into account the needs of the most vulnerable.

I. Draft article 8 [5]: Duty to cooperate

> In accordance with the present draft articles. States shall, as appropriate, cooperate among themselves, and with the United Nations and other competent intergovernmental organizations, the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.

1. Comments and observations made prior to the adoption of the first reading draft

142. Draft article 8 [5] was discussed in the Sixth Committee at the sixty-fourth to sixty-seventh and sixty-ninth sessions of the General Assembly.

143. Chile[364] and Estonia[365] supported the need to further specify in the draft article the duties stemming from the primary responsibility of the affected State. In particular, Chile[366] suggested that the relationship between the primary responsibility of the affected State and the obligation to cooperate needed to be further emphasized.

144. Ireland,[367] while agreeing in principle with the insertion in the draft articles of a general reference to a duty to cooperate "as appropriate", pointed out that such a provision should not go beyond the understanding of the concept under customary international law and suggested that such a limitation could be made more explicit in the commentary.[368]

145. The Nordic States[369] pointed to the need to strike a balance between three different elements of the duty to cooperate, namely, the sovereignty of the affected State, the obligation of conduct imposed on assisting States and the limitation of disaster relief assistance to the specific elements that normally made up cooperation on the matter. The need to find a balance between the principle of cooperation among States and other applicable principles of international law was stressed by Romania, which suggested analysing whether disaster response should take place

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[364] A/C.6/65/SR.26, para. 11.

[365] A/C.6/65/SR.23, para. 69.

[366] A/C.6/65/SR.26, para. 11.

[367] A/C.6/64/SR.22, para. 19.

[368] A/C.6/69/SR.19, para 175.

[369] A/C.6/67/SR.18, para. 53.

only following a request from the affected State or whether other States could act on their own initiative to protect the rights of the victims.[370]

146. Malaysia[371] was of the view that the duty to cooperate enshrined in the draft article needed to be clearly defined in order to enable States to understand the extent of their obligations. Myanmar maintained that requiring the affected State to cooperate with any particular entity would be counterproductive and had to be avoided.[372] Similarly, Greece[373] noted that the use of a mandatory language, in particular the use of the word "shall", did not find support in State practice. The United Kingdom[374] was of the view that the recourse to "duties" was at odds with the essentially voluntary nature of the principle of cooperation. According to Israel,[375] the draft article needed to clarify that the envisaged cooperation was not an obligation imposed on the assisting State. Concerns about the use of the word "shall" in the draft article were also expressed by the Nordic States[376] and Austria.[377] The Russian Federation[378] noted that the duty enshrined in the draft did not represent a well-established principle of international law. In its view, the draft article needed to specify that the affected State had a right to choose from whom to accept assistance and with whom it would cooperate on reducing the risk and effects of a disaster.[379]

147. The Hungarian delegation supported including the duty to provide assistance when requested.[380]

148. The Islamic Republic of Iran[381] was of the view that the affected State did not have the same obligation to cooperate with other international organizations as it had with the United Nations. In its view, the draft article should be redrafted in order to clarify the scope and limits of the duty to cooperate under the Charter of the United Nations and international law. Cuba made a similar proposal and called for, inter alia, the inclusion of a reference to the principle of non-intervention in the domestic affairs of States.[382] The Islamic Republic of Iran[383] also proposed that the draft article distinguish between States and international organizations on the one hand and relevant non-governmental organizations on the other, since the affected State had no duty to seek assistance from the latter organizations. Moreover, the Islamic Republic of Iran[384] expressed doubt regarding the reference to the International Committee of the Red Cross, due to its unique role in dealing with situations under international humanitarian law.

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[370] A/C.6/64/SR.22, para. 25.
[371] A/C.6/66/SR.24, para. 120.
[372] A/C.6/64/SR.21, para. 3.
[373] A/C.6/67/SR.19, para. 58.
[374] A/C.6/67/SR.19, para. 65.
[375] A/C.6/67/SR.20, para. 38.
[376] A/C.6/67/SR.18, para. 53.
[377] A/C.6/67/SR.18, para. 88.
[378] A/C.6/68/SR.25, para. 38.
[379] A/C.6/69/SR.19, para. 102.
[380] A/C.6/68/SR.18, para. 63.
[381] A/C.6/64/SR.22, para. 82.
[382] Comments submitted in writing, 5 January 2011.
[383] A/C.6/67/SR.20, para. 15.
[384] A/C.6/69/SR.21, para 25.

149. The Russian Federation suggested that draft article 8 [5] be merged with draft article 9 [5 bis].[385]

2. Comments and observations received in response to the request of the International Law Commission

150. Austria reiterated its concern that draft article 8 [5] should not be interpreted as establishing a duty by States to provide assistance when requested by the affected State.

151. Ecuador proposed including a reference to the obligations of the organizations and entities mentioned in draft article 8 [5].

152. The Association of Caribbean States recommended that the provision specify that cooperation should be undertaken on the basis of existing legal arrangements.

153. The European Union welcomed the fact that the draft articles encompassed the broader notion of "assisting actors", and that a key feature of activity in the field of disaster relief assistance was international cooperation not only among States, but also with competent intergovernmental and non-governmental organizations. It pointed out that such expression of good practice should extend to cover cooperation on, inter alia, needs assessments, situation overview and delivery of assistance. It noted that, under the present formulation, the draft article could be read to exclude cooperation between international actors, and suggested that the point be covered in the commentary.

154. FAO acknowledged that, while the obligation to cooperate did not amount to a general duty to provide assistance, it could be construed as an obligation to consider early warning reports and requests for assistance, without there being a duty to accede to such requests.

155. IFRC was appreciative of the express mention in the draft article, but maintained that there was a strong normative and practical reason to include its national societies as well. Accordingly, it recommended replacing the reference to "the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross" with "the components of the International Red Cross and Red Crescent Movement".

156. The Office for the Coordination of Humanitarian Affairs welcomed the emphasis in draft article 8 [5] on cooperation between a range of different "assisting actors". It reiterated its recommendation that reference also be made to "any other entity or individual", as private actors also had an important role to play. It further requested an express reference to the responsibility of the Emergency Relief Coordinator in accordance with General Assembly resolution 46/182, with appropriate elaboration in the commentary. It also called for the inclusion in the commentary of a reference to a "duty to inform" or a "duty to notify", analogous to that contained in draft article 17 of the draft articles on prevention of transboundary harm from hazardous activities, which entail a duty to notify those actors that have a mandated role to gather information, provide early warning and coordinate assistance from the international community.

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[385] A/C.6/68/SR.25, para. 38.

157. The World Bank pointed out that clarity as to the legal/regulatory framework under which cooperation was to take place would significantly affect the speed of constituting and operationalizing such cooperation. It called for greater specification regarding the rules and logistics for coordination. It expressed the view that, if cooperation were made a duty, there would need to be a clear set of rules in order that such duty did not become a debilitating factor.

3. Recommendation of the Special Rapporteur

158. At the outset, the Special Rapporteur draws attention to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[386] adopted on the occasion of the twenty-fifth anniversary of the Organization. The Declaration authoritatively codified and progressively developed the seven fundamental principles of international law that inform that treaty of treaties, the Charter of the United Nations. The Declaration solemnly proclaimed the principle of cooperation ("the duty [under international law] to cooperate"). In conformity with the Charter and the Declaration, draft article 8 [5] simply embodies that universally recognized Charter principle, in its authoritative formulation as the "duty to cooperate", for the purposes of the present draft articles.

159. The Special Rapporteur sees no alteration to the basic thrust of draft article 8 [5] with the insertion of an express reference to the United Nations Emergency Relief Coordinator in the text, nor with envisaging in it the national societies by replacing the reference to "the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross" with one to "the components of the Red Cross and Red Crescent Movement".

160. For the Special Rapporteur, the text can be further streamlined by replacing the expressions "other competent intergovernmental organizations" and "relevant non-governmental organizations" with "other assisting actors", a term which, as defined in draft article 4, subparagraph (c), includes those two types of organizations.

161. As a result, the Special Rapporteur recommends that, with the indicated changes, the first reading text of draft article 8 be referred to the Drafting Committee, to read as follows:

Draft article 8
Duty to cooperate

In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, in particular its Emergency Relief Coordinator, with the components of the Red Cross and Red Crescent Movement and with other assisting actors.

J. Draft article 9 [5 bis]: Forms of cooperation

For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.

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[386] General Assembly resolution 2625 (XXV), annex.

1. Comments and observations made prior to the adoption of the first reading draft

162. Draft article 9 [5 bis] was discussed in the Sixth Committee at the sixty-seventh to sixty-ninth sessions of the General Assembly.

163. The European Union,[387] Slovenia,[388] Chile,[389] Mexico,[390] South Africa,[391] France,[392] Malaysia,[393] the United States,[394] Indonesia[395] and Hungary[396] generally welcomed the draft article.

164. Pakistan[397] stressed that the affected State retained primacy in all forms of cooperation, including humanitarian assistance and coordination of international relief actions. El Salvador[398] noted that draft article 9 [5 bis] rightly maintained the discretionary nature of cooperation between States.

165. Singapore[399] asserted that, beyond the duty to cooperate set out in draft article 8 [5], draft article 9 [5 bis] did not create an additional duty for the affected State to request the forms of cooperation described in the list, nor did it establish an additional duty for other States to offer them. According to the Russian Federation,[400] draft article 9 [5 bis] was not to be regarded as creating legal obligations; the forms of assistance offered to an affected State had to be based on the State's own request. Similarly, Slovenia[401] was of the view that draft article 9 [5 bis] could not be taken to imply that States had a duty to provide assistance, since such a duty had no basis in existing international law and practice.

166. Mexico[402] indicated that the wording of draft article 9 [5 bis] should not be interpreted as limiting States' ability to offer forms of cooperation other than those mentioned, and that the draft article should be clarified to confirm that States have that option. Ireland,[403] the Russian Federation[404] and Singapore[405] recalled that the list of forms of cooperation contained in article 9 [5 bis] was not intended to be exclusive.

167. Indonesia[406] was of the view that, given the unpredictable nature of disasters, the draft articles should not attempt to provide an exhaustive list of all forms of

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[387] A/C.6/67/SR.18, para. 71.
[388] A/C.6/67/SR.18, para. 126.
[389] A/C.6/67/SR.19, para. 10.
[390] A/C.6/67/SR.19, para. 18.
[391] A/C.6/67/SR.19, para. 83.
[392] A/C.6/67/SR.19, para. 95.
[393] A/C.6/67/SR.19, para. 110.
[394] A/C.6/67/SR.19, para. 115.
[395] A/C.6/67/SR.20, para. 28.
[396] A/C.6/67/SR.20, para. 52, and A/C.6/68/SR.18, para. 63.
[397] A/C.6/68/SR.24, para. 116.
[398] A/C.6/67/SR.19, para. 49.
[399] A/C.6/68/SR.25, para. 108.
[400] A/C.6/68/SR.25, para. 37, and A/C.6/69/SR.19, para. 104.
[401] A/C.6/67/SR.18, para. 126.
[402] A/C.6/67/SR.19, para. 18.
[403] A/C.6/67/SR.19, para. 22.
[404] A/C.6/68/SR.25, para. 37, and A/C.6/69/SR.19, para. 104.
[405] A/C.6/68/SR.25, para. 108.
[406] A/C.6/67/SR.20, para. 28.

assistance. Greece[407] also supported having an indicative list, as opposed to a restrictive one, of the types of assistance that might be provided.

168. With regard to the types of assistance envisaged by draft article 9 [5 bis], the European Union[408] recommended that specific reference should be made in the commentary to the use of satellite imagery as an important means of delivering technical assistance during emergency response. Ireland[409] wondered whether reference might usefully be made to needs assessment. Romania[410] suggested including financial assistance among the envisaged types of cooperation. South Africa[411] noted that draft article 9 [5 bis] made no reference to any form of consultation between the States concerned as to the type of cooperation or assistance required, and expressed the view that the lack of consultation could result in the rendering of ineffective or inadequate assistance.

169. Austria[412] was of the view that there was no need to retain draft article 9 [5 bis], since, as the commentary itself had stated, it did not contain any normative substance, but only a demonstrative enumeration of possible forms of cooperation.

2. Comments and observations received in response to the request of the International Law Commission

170. Austria reiterated its view that the draft article was not necessary. In its view, an inventory of the various measures taken by States was best located in the commentary.

171. Cuba suggested including a reference to "international assistance" as a form of cooperation.

172. IFRC maintained that draft articles 9 [5 bis] and 10 [5 ter] should also include reference to recovery, and suggested the inclusion of financial support, training, information-sharing and joint simulation exercises and planning as additional forms of cooperation.

173. IOM suggested including cooperation with the countries of origin of non-nationals that are present in the territory in the form of bilateral coordination aimed at ensuring access to nationals during crisis, coordinating evacuation procedures and facilitating documentation, among other things, as a form of cooperation.

174. The Office for the Coordination of Humanitarian Affairs proposed including "services" as a form of cooperation, because it was referred to in draft article 4, subparagraph (d).

3. Recommendation of the Special Rapporteur

175. As is intended to be made clear by the use of the verb "includes", the list of forms of cooperation found in draft article 9 [5 bis] is merely indicative. Other such forms are also covered, even if not mentioned by name in the text. Consequently,

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[407] A/C.6/67/SR.19, para. 58.
[408] A/C.6/67/SR.18, para. 71.
[409] A/C.6/67/SR.19, para. 22.
[410] A/C.6/67/SR.19, para. 89.
[411] A/C.6/67/SR.19, para. 83.
[412] A/C.6/68/SR.23, para. 62.

the Special Rapporteur sees no need to amend draft article 9 [5 bis] by adding more examples to those already given. Besides, a specific mention of "international assistance" is unnecessary as it is subsumed in the express reference the draft article makes to "humanitarian assistance".

176. The Special Rapporteur, therefore, recommends that the text of the first reading draft article 9 [5 bis] be referred to the Drafting Committee unchanged.

K. Draft article 10 [5 ter]: Cooperation for disaster risk reduction

> Cooperation shall extend to the taking of measures intended to reduce the risk of disasters.

1. Comments and observations made prior to the adoption of the first reading draft

177. Draft article 10 [5 ter] was discussed in the Sixth Committee at the sixty-eighth and sixty-ninth sessions of the General Assembly.

178. Tonga[413] noted that draft article 10 [5 ter] confirmed that the States' duty to cooperate, as set out in draft article 8 [5], encompassed measures intended to reduce the risk of disasters. South Africa[414] and Greece,[415] on the other hand, argued that draft article 10 [5 ter] provided an unclear requirement for States and other stakeholders to cooperate. For Greece,[416] it would have been preferable if a straightforward reference to draft article 10 [5 ter] had been included in draft article 11 [16], which would read that each State, in the performance of its duty to reduce the risk of disasters, might "ask and seek the cooperation provided for in article [10 [5 ter]], where appropriate". Conversely, the European Union[417] suggested that it would be advisable to include a reference to draft article 11 [16] in draft article 10 [5 ter].

179. South Africa[418] affirmed that, to give full effect to draft article 10 [5 ter], it should be incorporated into draft article 8 [5]. The Russian Federation[419] also spoke in favour of draft article 10 [5 ter] being incorporated into draft article 8 [5]. It proposed the following wording on cooperation: "States shall, as far as they are able, cooperate among themselves and, as appropriate, with international organizations to provide assistance to an affected State and to provide assistance among themselves on disaster risk reduction."[420] The Netherlands[421] supported the intention to merge draft article 10 [5 ter] into draft article 8 [5] or 9 [5 bis], which would avoid giving too much prominence to the pre-disaster phase. India[422] agreed with the possibility of grouping together the draft articles dealing with aspects of cooperation.

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[413] A/C.6/68/SR.25, para. 85.

[414] A/C.6/68/SR.24, para. 12.

[415] A/C.6/68/SR.24, para. 33.

[416] Ibid.

[417] A/C.6/68/SR.23, para. 31.

[418] A/C.6/68/SR.24, para. 12.

[419] A/C.6/68/SR.25, para. 38.

[420] A/C.6/69/SR.19, para. 103.

[421] A/C.6/68/SR.25, para. 98.

[422] A/C.6/68/SR.24, para. 123.

180. Malaysia[423] noted that the term "measures" appeared to correlate with the specific measures detailed in draft article 11 [16], paragraph 1, which could unduly extend the duty to cooperate. Furthermore, Malaysia expressed the concern that the combination of draft articles 8 [5], 10 [5 ter] and 11 [16] could lead to the usurpation of the sovereign right of the affected State by a supranational body.[424] Thailand[425] maintained that draft article 10 [5 ter] should be construed in the light of draft articles 14 [11] and 15 [13]. Read together, those draft articles recognized the right of the affected State to reject offers of assistance if it deemed that the offering State or entity harboured an ulterior motive that could prejudice its sovereignty or a crucial national interest.

181. The European Union[426] suggested that, in line with the Hyogo Framework for Action,[427] the words "and to build resilience thereto" should be added at the end of draft article 10 [5 ter]. Furthermore, it specified that it should be clear from a full reading of draft articles 8 [5], 9 [5 bis] and 10 [5 ter] that cooperation extended *ratione temporis* not only to the response phase of a disaster but also to the pre- and post-disaster phases.

2. Comments and observations received in response to the request of the International Law Commission

182. Austria expressed the concern that, given the broad definition of disasters, the provision would oblige States to cooperate in reducing the risk of terrorist acts or civil strife below the level of a non-international armed conflict (which was already covered by existing rules of international law).

183. The Netherlands reiterated its preference for a clear focus on the response phase of the actual disaster, as was suggested by the title of the study.

184. Qatar proposed including a reference to the mitigation of the consequences of disasters.

185. The European Union and the United Nations Office for Disaster Risk Reduction recommended referring to the recommendations contained in the Sendai Framework. The United Nations Office for Disaster Risk Reduction was of the view that, were the draft article to be incorporated in draft article 8 [5], it would be preferable to retain it as a separate paragraph and to preserve its current formulation. The World Bank called for a clarification as to whether the draft article would also apply to post-disaster risk reduction beyond immediate relief and recovery.

186. WFP considered that the inclusion of universal international obligations on the prevention of disasters, including disaster risk reduction, would facilitate its work insofar as it would prompt States to adopt domestic disaster prevention regulation, thereby increasing the likelihood that robust systems would be in place when disaster struck.

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[423] A/C.6/68/SR.25, para. 23.

[424] Ibid.

[425] A/C.6/68/SR.25, para. 88.

[426] A/C.6/68/SR.23, para. 31.

[427] Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, adopted at the World Conference on Disaster Reduction, Kobe, Hyogo, Japan, 18-22 January 2005 (A/CONF.206/6 and Corr.1, chap. I, resolution 2).

3. Recommendation of the Special Rapporteur

187. The comments and observations made on draft article 10 [5 ter] relate mainly to its placing, not its text. In that connection, the Special Rapporteur stresses that, as already explained above in connection with draft article 2 [2], the main, though not exclusive, focus of the present set of draft articles is the response phase of the disaster cycle, without excluding from its scope measures taken to prevent or reduce the risk of a disaster at the pre-disaster phase. In order to highlight the growing importance that attaches to that latter phase, two related draft articles, 10 [5 ter] and 11 [16] have been included consecutively as separate, autonomous provisions. While draft article 8 [5] is couched in general terms, the forms of cooperation exemplified in the immediately following provision, draft article 9 [5 bis], clearly relate to the disaster proper and post-disaster phase. Draft article 10 [5 ter] combines in one single provision, as far as disaster risk reduction is concerned, both the duty to cooperate as embodied in draft article 8 [5] and a general reference to whatever measures may be taken aimed at reducing the risk of disasters, examples of which are listed in paragraph 2 of the next provision, draft article 11 [16]. To merge draft article 10 [5 ter] with either draft articles 8 [5] or 9 [5 bis] would mix their distinctive character and disrupt their logical sequence, leading to confusion.

188. In the light of the foregoing, the Special Rapporteur recommends that the first reading text of draft article 10 [5 ter] be referred to the Drafting Committee, reformulated to read as follows:

> **Draft article 10**
> **Cooperation for disaster risk reduction**
>
> The duty to cooperate enshrined in draft article 8 shall extend to the taking of measures intended to reduce the risk of disasters.

L. Draft article 11 [16]: Duty to reduce the risk of disasters

> 1. Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters.
>
> 2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.

1. Comments and observations made prior to the adoption of the first reading draft

189. The question of including disaster risk reduction in the set of draft articles was considered in the debate in the Sixth Committee as early as the sixty-fourth session of the General Assembly. Draft article 11 [16], in its initial manifestation as draft article 16, was discussed in the Sixth Committee at the sixty-eighth and sixty-ninth sessions of the Assembly.

190. Early on, France took the view that the study of the topic should focus, *ratione temporis*, only on disaster response, since any attempt to codify the duty to prevent disasters would pose a daunting challenge, as the type of prevention needed would

vary according to the situation.[428] Cuba,[429] Ghana,[430] Greece,[431] Poland[432] and Thailand,[433] on the other hand, expressed support for a comprehensive approach to the topic focusing on the various phases of activities connected with disasters, including prevention. Ireland[434] and Portugal[435] indicated that while they accepted an initial focus on response, the Commission nonetheless should include questions of prevention and disaster reduction and mitigation within the scope of the draft articles.

191. Chile,[436] China,[437] Greece,[438] Germany,[439] Ireland,[440] Japan,[441] Mexico,[442] Poland,[443] Slovenia,[444] South Africa[445] and the European Union[446] subsequently welcomed the inclusion of draft article 11 [16]. The Netherlands, which had initially expressed doubts about addressing prevention or preparedness,[447] expressed support for the wording of the draft article, which it considered as appropriately clarifying the nature of the duty.[448] IFRC strongly supported the inclusion of draft article 11 [16] and indicated its view that a clearly affirmed international duty would be a helpful tool to address accountability gaps at domestic levels, which remained a frequent barrier to success in the reduction of risk.[449]

192. Thailand envisaged a comprehensive provision on the prevention and mitigation of disasters that included elements such as information-sharing, the right to receive appropriate warning and correct information, public participation in the provision of relief and risk management, improved coordination to cope with disasters and post-disaster rehabilitation.[450] Greece called for a clearer linkage in the text between draft articles 11 [16] and 10 [5 ter] on cooperation for disaster risk reduction, which it proposed would read that "each State, in the performance of its duty to reduce the risk of disasters, might ask and seek the cooperation provided for in draft article [10 [5 ter]], where appropriate".[451] Poland called on the Commission to harmonize the formulation of other provisions, such as draft articles 5 [7] and

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[428] A/C.6/64/SR.21, para. 20. See also A/C.6/68/SR.17, para. 112.
[429] A/C.6/65/SR.23, para. 94.
[430] A/C.6/64/SR.22, para. 9.
[431] A/C.6/67/SR.19, para. 59.
[432] A/C.6/64/SR.21, para. 75, and A/C.6/65/SR.23, para. 99.
[433] A/C.6/65/SR.23, para. 71.
[434] A/C.6/64/SR.22, para. 14.
[435] A/C.6/64/SR.21, para. 83.
[436] A/C.6/68/SR.24, para. 66.
[437] A/C.6/68/SR.26, para. 11.
[438] A/C.6/68/SR.24, para. 33.
[439] A/C.6/68/SR.24, para. 58, and A/C.6/69/SR.19, para. 170.
[440] A/C.6/68/SR.25, para. 117.
[441] A/C.6/68/SR.23, para. 72.
[442] A/C.6/68/SR.25, para. 11.
[443] A/C.6/68/SR.24, para. 106.
[444] A/C.6/68/SR.21, para. 49.
[445] A/C.6/68/SR.24, para. 18.
[446] A/C.6/68/SR.23, para. 31.
[447] A/C.6/67/SR.19, para. 30.
[448] A/C.6/68/SR.25, para. 98.
[449] A/C.6/68/SR.26, para. 17.
[450] A/C.6/67/SR.19, para. 42.
[451] A/C.6/68/SR.24, para. 33.

7 [6], so as to take into account the inclusion of disaster risk reduction within the scope of application of the draft articles.[452]

193. The United States disputed the assertion that each State had an obligation under international law to take the necessary and appropriate measures to prevent, mitigate and prepare for disasters. In its view, the information gathered by the Commission had not substantiated the existence of a rule of customary international law, nor was the progressive development of international law in that direction advisable, since it was for each State to decide what risk reduction measures would be necessary and appropriate.[453] Austria expressed the view that the inclusion of a duty to reduce the risk of disasters seemed to exceed the original mandate of the topic, and that such a broad duty risked interfering with existing legal regimes regarding the prevention of certain kinds of disasters; the focus could instead be placed on the prevention and reduction of the *effects* of disasters.[454] The Republic of Korea was of the opinion that it went beyond contemporary public international law to posit the duty to prevent as a general principle, other than in certain specific fields such as environmental law, and that any attempt to characterize it as such would bring about a diminution of State sovereignty.[455] The Russian Federation disputed the validity of the analogy drawn with international human rights law and international environmental law, and recommended that the provision be recast in the form of a recommendation and include the qualifier "within their capacity".[456] France[457] and the Islamic Republic of Iran[458] expressed doubts as to the existence of an international legal obligation to prevent the risk of disasters.

194. With regard to the formulation of draft article 11 [16], France proposed that the title be amended to read "*Prévention des catastrophes* (Disaster prevention)" so as to avoid broad generalizations with respect to existing law.[459] The United States proposed that the title be amended to "Reduction of risk of disasters".[460]

195. With regard to paragraph 1, Chile,[461] and Finland, on behalf of the Nordic States,[462] emphasized the significance of the reference to "each State", which was considered as appropriately reflecting the existence of a legal obligation for every State, acting on an individual basis, to take measures. The European Union proposed including a reference to the taking of "systematic" measures to ensure the reduction of the risk of disasters, which would track the language found in the Hyogo Framework for Action, and to the "effective" implementation of legislation. In addition, the European Union suggested that multi-hazard assessments include the identification of vulnerable people or communities and pertinent infrastructure in relation to the relevant hazards.[463] Chile was of the view that the reference to

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[452] A/C.6/68/SR.24, para. 106.

[453] A/C.6/68/SR.23, para. 48, and A/C.6/69/SR.20, para. 120.

[454] A/C.6/68/SR.23, para. 63.

[455] A/C.6/68/SR.24, para. 91.

[456] A/C.6/68/SR.25, para. 41, and A/C.6/69/SR.19, para. 105.

[457] A/C.6/68/SR.17, para. 113.

[458] Statement of 5 November 2013, 26th meeting, sixty-eighth session of the General Assembly.

[459] A/C.6/68/SR.17, para. 113.

[460] A/C.6/68/SR.23, para. 48.

[461] A/C.6/68/SR.24, para. 67.

[462] A/C.6/68/SR.23, para. 40.

[463] A/C.6/68/SR.23, para. 32.

"including through legislation and regulations" was appropriate.[464] South Africa suggested that it be rendered as "including, in particular, through legislation and regulations" so as to emphasize the importance of domestic legislation.[465] Chile also endorsed the reference to the ultimate aim of measures taken by States, namely "to prevent, mitigate, and prepare for disasters".[466] South Africa proposed adding the phrase "among others" as reference to the possibility of alternative measures that might be available.[467] Malaysia expressed a preference for the initial proposal of the Special Rapporteur, which had limited the adoption of "appropriate measures" to the establishment of institutional arrangements, without reference to the adoption of legislation and regulations.[468] Belarus recommended that the provision be reformulated to better reflect the economic and other constraints on the capacity of States to minimize natural disasters and to emphasize the importance of technical and other forms of assistance to affected States.[469]

196. Portugal recommended that the Commission further consider clarifying the degree of risk expected, so as to clarify when the duty to reduce the risk of disaster and the obligation to take measures to prevent, mitigate and prepare for disasters arise for States.[470] South Africa observed that not all States had the capacity or resources to take necessary and appropriate measures and therefore would fail to comply with the provision, especially when such States lacked a national legal framework that regulated disaster risk reduction.[471] India observed that it was unclear whether the provision applied also to industrial disasters, and suggested that account be taken of the principle of common but differentiated responsibility, envisaged under environmental law for developing States.[472] Tonga suggested that the commentary to the draft article clarify that a State's duty to prevent disasters included a duty to take necessary and appropriate measures to ensure that its actions did not increase the risk of disaster in other States.[473]

197. With regard to paragraph 2, the observer representative of the European Union proposed that reference also be made to practical pre-emptive measures that assisted people or communities in reducing their exposure and enhancing their resilience.[474] Chile,[475] Finland, on behalf of the Nordic States,[476] and Japan[477] recalled that the list of measures was not exhaustive. South Africa proposed to further clarify that point with the addition of the phrase "among others".[478] Finland, on behalf of the Nordic States, expressed the view that while national legislation was important, it was not enough: effective practical measures were needed to reduce the risk for and

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[464] A/C.6/68/SR.24, para. 67.
[465] A/C.6/68/SR.24, para. 16.
[466] A/C.6/68/SR.24, para. 67.
[467] A/C.6/68/SR.24, para. 17.
[468] A/C.6/68/SR.25, para. 24.
[469] A/C.6/69/SR.20, para. 82.
[470] A/C.6/68/SR.23, para. 76.
[471] A/C.6/68/SR.24, para. 15.
[472] A/C.6/68/SR.24, para. 122.
[473] A/C.6/68/SR.25, para. 86.
[474] A/C.6/68/SR.23, para. 32.
[475] A/C.6/68/SR.24, para. 67.
[476] A/C.6/68/SR.23, para. 40.
[477] A/C.6/68/SR.23, para. 72.
[478] A/C.6/68/SR.24, para. 17.

consequences of disasters.[479] Chile confirmed its understanding that, while the obligation to reduce risk entailed the adoption of measures primarily at the national level, if the measures required interaction between States or with other international actors then the applicable rule was to be found in draft article 8 [5], taken together with draft article 9 [5 ter].[480] China encouraged the Commission to include a reference to the role of space technology and other new technologies.[481] The observer delegation of IFRC recommended that reference also be made to assessing and reducing the vulnerability and increasing the resilience of communities faced with natural hazards, as well as to empowering communities to make themselves safer through information, education and engagement in disaster risk reduction planning and activities.[482]

198. Malaysia expressed the concern that the requirement for States to collect and disseminate risk and past loss information might touch on matters affecting a State's national security, and expressed its preference that such obligation not be absolute but instead be guided by each State's existing laws, rules, regulations and national policies.[483]

2. Comments and observations received in response to the request of the International Law Commission

199. Australia reiterated its suggestion that it would be worthwhile to further consider the capacity of all States to fulfil the duties embodied in the draft article.

200. Finland, on behalf of the Nordic States, emphasized the importance of the principle of due diligence, as partly reflected in the duty of States to take preventive measures to reduce the risk of disasters set forth in draft article 11 [16]. It suggested that the commentary elaborate the element of risk prevention further. In addition, the Nordic States noted that it was necessary to set a duty for States not only to take relevant domestic measures but also to engage in international cooperation, as mentioned in draft article 10 [5 ter].

201. Cuba proposed that paragraph 2 be amended to specify the different phases of "early warning".

202. Germany pointed to the need to adhere to the Sendai Framework and suggested the inclusion of a reference to early warning systems and risk transfer mechanisms.

203. The Association of Caribbean States observed that the concept of "dissemination", in paragraph 2, could add to the burden of the affected State if it were expected to develop a platform of collected data and also introduced issues of accessibility, maintenance and sharing protocols, among other things.

204. The European Union recommended reflecting in the draft article the recommendations of the Sendai Framework.

205. FAO agreed that the resilience of local populations was very important and should be addressed during both the pre-disaster and post-disaster phases. It

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[479] A/C.6/68/SR.23, para. 40.
[480] A/C.6/68/SR.24, para. 68.
[481] A/C.6/68/SR.26, para. 12.
[482] A/C.6/68/SR.25, para. 18.
[483] A/C.6/68/SR.25, para. 24.

observed that the commentary to the draft article could benefit from an analysis of the relationship between reducing the risk of disasters and the concept of resilience.

206. IFRC reiterated its position that asserting the duty to take necessary and appropriate steps to reduce disaster risks in a binding instrument would provide a helpful tool for champions of disaster risk reduction within governments to make the case for greater attention to that critical activity. It was of the opinion that the list of measures in paragraph 2 should not be limited to assessing risk but also extend to assessing and reducing the vulnerability and increasing the resilience of communities faced with natural hazards.

207. IOM also supported the inclusion of an express reference to the Sendai Framework. It further expressed the view that the examples of measures listed in paragraph 2 were too narrow. It recalled that neither the Hyogo Framework for Action nor the Sendai Framework linked disaster risk reduction with humanitarian interventions per se. Reducing risk was a process mainly dependent on non-humanitarian actors, in particular when considering that its core elements were rooted in sustainable development and long-term local-level empowerment practices. The draft article needed to acknowledge more strongly the importance of interventions aimed at reducing vulnerability and building resilience.

208. The United Nations Office for Disaster Risk Reduction welcomed the draft article, which it characterized as representing a critical advancement for disaster risk reduction and accountability in disaster risk management. At the same time, it proposed a number of refinements to the draft article and its commentary to place greater emphasis on risk.

209. The World Bank recommended making reference to existing standards and good practices for legislation, regulations and measures for disaster prevention and proposed the inclusion of spatial planning within the measures listed in paragraph 2.

3. Recommendation of the Special Rapporteur

210. The text of draft article 11 [16] was adopted on first reading before the adoption in 2015 of the Sendai Framework, which reflects current thinking about a rapidly evolving concept. The Special Rapporteur is, therefore, aware of the need to keep in mind the Sendai Framework when drafting the text of draft article 11 [16] to be adopted on second reading. As has been pointed out, the Sendai Framework goes beyond the focus on "disaster" by focusing on "risk". Accordingly, the Special Rapporteur can accept the suggestion to add in paragraph 1, after the word "prevent", the phrase "the creation of new risk and reduce existing risk"; as well as accept the change in the title of the draft article from "Duty to reduce the risk of disasters" to "Reduction of risk of disasters". To add the word "systematic" after "measures", as suggested, is not necessary since it is covered by the formula "necessary and appropriate" already found in the text.

211. As for paragraph 2, the Special Rapporteur deems it appropriate to repeat here the explanation given elsewhere, that the use of the verb "include" is intended to denote the non-exhaustive character of the list of measures mentioned.

212. In the light of the foregoing, the Special Rapporteur recommends that the first reading text of draft article 11 [16] be referred to the Drafting Committee as amended, to read as follows:

Draft article 11
Reduction of risk of disasters

1. Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent the creation of new risk and reduce existing risk and to mitigate and prepare for disasters.

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information and the installation and operation of early warning systems.

M. Draft article 12 [9]: Role of the affected State

1. The affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief and assistance on its territory.

2. The affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance.

1. Comments and observations made prior to the adoption of the first reading draft

213. Draft article 12 [9] was discussed in the Sixth Committee at the sixty-fifth, sixty-sixth and sixty-ninth sessions of the General Assembly.

214. It received general support from Switzerland,[484] the Czech Republic,[485] Malaysia,[486] Romania,[487] Sri Lanka,[488] the European Union,[489] Colombia,[490] France,[491] Ireland,[492] Tonga[493] and El Salvador.[494]

215. Pakistan considered draft article 12 [9] to be the essential provision in the draft articles, and indicated that the primacy of the affected State in the provision of disaster relief assistance was based on the central principle of international law, i.e., State sovereignty.[495] India maintained that the draft articles needed to recognize the sovereignty of the affected State, its responsibility towards its own nationals and its right to decide whether it required international assistance, as the affected State was in the best position to assess the needs of the situation and its own capacity to respond, and, if it accepted international assistance, the right to direct, coordinate and control such assistance within its territory.

216. Chile preferred to emphasize the relationship between the primary responsibility of the affected State for dealing with a disaster and the obligation to

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[484] A/C.6/65/SR.22, para. 38.
[485] A/C.6/65/SR.23, para. 25.
[486] A./C.6/65/SR.24, para. 122.
[487] A/C.6/65/SR.24, para. 48.
[488] A/C.6/65/SR.26, para. 44.
[489] A/C.6/66/SR.21, para. 55.
[490] A/C.6/66/SR.22, para. 27.
[491] A/C.6/66/SR.23, para. 38.
[492] A/C.6/66/SR.25, para. 21.
[493] A/C.6/69/SR.20, para. 6.
[494] Comments submitted in writing, 17 January 2011.
[495] A/C.6/65/SR.24, para. 58.

cooperate under international law, which was a relationship that did not detract from the sovereignty of the affected State.[496] Hungary, while affirming that the Commission's approach was in line with the principle of non-intervention, signalled the need to keep in mind recent developments, such as the principle of the responsibility to protect.[497] Finland, on behalf of the Nordic States, expressed the view that the responsibility of the affected State should not be exclusive, and called on the Commission to find the right balance between State sovereignty and the duty to cooperate.[498] Moreover, Finland, on behalf of the Nordic States, pointed to the need to clarify the scope and limits of the affected State's exercise of its primary responsibility to protect persons affected by a disaster.[499] Spain, while supporting the provision, considered that further reflection was needed, since the absolute primacy of the will of the affected State might conflict with other fundamental international law norms and particularly with the principle of protection of human rights.[500]

217. With regard to paragraph 1, Pakistan supported a reference to the primacy of the affected State,[501] while Algeria agreed on the use of the term "duty" with respect to the role of the affected State.[502] Romania maintained that the affected State's duty to protect the persons in its territory was a duty towards such persons, and suggested the addition of a third paragraph on the affected State's duty towards the international community as a whole.[503] Ghana expressed the view that the primary responsibility of the affected State implied a duty to respect the right of victims, both citizens and foreign nationals, to receive assistance.[504]

218. The United Kingdom remarked that the provision did not make clear in legal terms what the content of the affected State's duty to ensure the protection of persons would be, nor to whom it would be owed or what it would entail in practice.[505] Italy[506] and the Netherlands[507] stressed the need to clarify the consequences of a failure by the affected State to provide assistance. The Netherlands also suggested examining the relationship between the principles in draft article 7 [6] and the assistance provided by the affected State.[508] The Islamic Republic of Iran called on the Commission to focus only on the rights and obligations of States. It did not share the view that the refusal of a State to accept international aid could be characterized as an internationally wrongful act if such refusal jeopardized the rights of victims of the disaster. In its view, it was for the affected State to determine whether receiving external assistance was appropriate or not, without such refusal triggering its international responsibility.[509] The Russian

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[496] A/C.6/65/SR.26, para. 11.
[497] A/C.6/65/SR.21, para. 33. For general comments on the concept of the "responsibility to protect", see para. 10.
[498] A/C.6/65/SR.22, para. 31.
[499] A/C.6/65/SR.22, para. 31.
[500] A/C.6/65/SR.24, para. 87.
[501] A/C.6/65/SR.24, para. 58
[502] A/C.6/66/SR.25, para. 31.
[503] A/C.6/66/SR.25, para. 17.
[504] A/C.6/65/SR.24, para. 80.
[505] A/C.6/65/SR.24, para. 65.
[506] A/C.6/65/SR.23, para. 26.
[507] A/C.6/65/SR.23, para. 45
[508] Ibid.
[509] A/C.6/65/SR.24, para. 36.

Federation, while conceding that the affected State had a responsibility to take measures to ensure the protection of persons on its territory, maintained that it was not a legal obligation.[510] It recommended replacing the expression "to ensure the protection", whose meaning was not clear, with "to adopt all necessary measures to provide assistance".[511]

219. Mexico[512] expressed general support for paragraph 2. According to Argentina, the provision reflected reality. In its view, that primary role was also exclusive unless the affected State expressly delegated it.[513] The Russian Federation maintained that the formulation of the second paragraph could imply the transfer of the affected State's responsibility to any other party without the consent of the State in question, and consequently preferred the formula of "responsibility of the affected State".[514] Italy suggested that the term "primary role" be clarified in order to specify how the role of the affected State related to that of other States and international organizations and their access to disaster victims.[515]

220. IFRC called for clarification of the term "control", which was used in some treaties but not in General Assembly resolution 46/182 nor in the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance developed by IFRC (IFRC Guidelines).[516] In its opinion the commentary needed to address the issue, recognizing in particular the need for the affected State to respect the capacity of humanitarian organizations to abide by humanitarian principles.[517] Japan, while supporting the provision, cautioned that, in the light of the overarching purpose of protecting affected persons, it might be necessary for the affected State to coordinate aid offered by other States and non-state actors.[518] Austria placed on record its view that military relief personnel remained under the full command of the assisting State.[519] Greece recommended including an express reference to persons with disabilities.[520]

2. Comments and observations received in response to the request of the International Law Commission

221. While Australia welcomed the reflection in draft article 12 [9] of the primary role of the affected State in preventing and responding to disasters, it advised caution when dealing with the assertion, in paragraph 1, of an unqualified duty on the part of the affected State to ensure the protection of persons and the provision of disaster relief and assistance on its territory.

222. Cuba proposed the inclusion of the phrase "and in accordance with its national legislation" after "sovereignty".

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[510] A/C.6/65/SR.23, para. 58.

[511] A/C.6/69/SR.19, para. 105.

[512] A/C.6/65/SR.25, para. 6.

[513] A/C.6/66/SR.25, para. 10.

[514] A/C.6/69/SR.19, para. 106.

[515] A/C.6/65/SR.23, para. 26.

[516] International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and International Recovery Assistance*, Geneva, 2007.

[517] Statement of 29 October 2010, 25th meeting, sixty-fifth session of the General Assembly.

[518] A/C.6/65/SR.25, para. 41.

[519] A/C.6/69/SR.19, para. 122.

[520] A/C.6/66/SR.24, para. 24.

223. Germany expressed support for the approach that sovereignty entailed the duty of the affected State to ensure within its jurisdiction the protection of persons and the provision of disaster relief.

224. Switzerland expressed the view that paragraph 2 was more concerned with sovereignty and more intrusive towards humanitarian action than international humanitarian law.

225. The European Union welcomed the balance between the need to safeguard the national sovereignty of affected States on the one hand and the duty to cooperate on the other, as provided for by the interplay of draft articles 13 [10], 14 [11] and 16 [12].

226. ICRC was of the view that the commentary did not sufficiently delineate the meaning of the terms "direction, control, coordination and supervision of such relief and assistance". In its view, the draft articles were potentially intrusive for impartial humanitarian organizations such as ICRC. It further recalled that no such requirements of direction, coordination and supervision were to be found in the relevant international humanitarian law rules. As such, the draft articles were oriented more towards sovereignty than the corresponding international humanitarian law provisions governing humanitarian access.

227. The Office for the Coordination of Humanitarian Affairs expressed support for the approach adopted in draft articles 12 [9] to 15 [13] towards the concept of sovereignty, in particular the notion that sovereignty entailed the duty of the affected State to ensure within its territory the protection of persons and the provision of disaster relief.

228. The World Bank found the interaction among draft articles 12 [9] to 15 [13] to be confusing. It expressed the concern that such a legal framework could actually introduce additional formal due diligence requirements that could result in delays.

3. Recommendation of the Special Rapporteur

229. The concerns reflected in the comments and observations made do not call for changes to the text of draft article 12 [9], as adopted on first reading. The suggested inclusion of the phrase "and in accordance with its national legislation" after "sovereignty" appears unnecessary, as the exercise of sovereign powers must inevitably conform to the national legislation enacted by virtue of those powers. Consequently, the Special Rapporteur recommends that the first reading text of draft article 12 [9] be referred unchanged to the Drafting Committee.

N. Draft article 13 [10]: Duty of the affected State to seek external assistance

> To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from among other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations, as appropriate.

1. Comments and observations made prior to the adoption of the first reading draft

230. Draft article 13 [10] was discussed in the Sixth Committee at the sixty-sixth, sixty-seventh and sixty-ninth sessions of the General Assembly.

231. The draft article was supported by Finland, on behalf of the Nordic States,[521] the Czech Republic,[522] Spain,[523] Romania,[524] India[525] and Tonga (on behalf of the 12 Pacific small island developing States).[526] Ireland expressed its appreciation for the formula "duty to seek" instead of a "duty to request".[527] The European Union remarked that the provision was premised on the primary responsibility of the affected State.[528] Spain asserted that the fact that the affected State had both a right and a duty to assist its own population was an essential consideration in judging the scope of the obligation of an affected State to consider and accept offers of external assistance, especially from States and international organizations.[529]

232. El Salvador remarked that the clause "to the extent that the disaster exceeds its national response capacity" could lead to delays in the provision of assistance, and proposed to substitute it with the wording used in the IFRC Guidelines.[530]

233. France agreed with the view expressed in the commentary that the affected State would be in the best position to determine the limits of its response capacity and suggested that such a view be reflected in the text of the draft articles.[531] Similarly, Malaysia stressed that the affected State should retain the right to determine whether a disaster exceeded its national response capacity.[532] Algeria remarked that draft article 13 [10] raised questions as to how to assess national response capacity, especially in an emergency situation.[533] The Republic of Korea pointed to the difficulties in determining whether a disaster exceeded the national response capacity of an affected State.[534] South Africa[535] and Cuba[536] were of the view that the affected State had the right to determine whether or not its internal capacity was sufficient to protect disaster victims within its jurisdiction and that it should not be obliged to seek or request such assistance. China stated that the affected State, by virtue of its sovereignty, had the right to decide whether or not to invite other States to participate in rescue and relief activities or to accept external assistance, in conformity with the universally accepted principle of consent of the affected State.[537]

234. The Netherlands expressed a preference for the previous formulation of the draft article (i.e., "if the disaster exceeds its national response capacity"). The formulation adopted on first reading, in its view, seemed narrower in scope, requiring

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[521] A/C.6/66/SR.21, para. 60.
[522] A/C.6/66.SR.23, para. 19.
[523] A/C.6/66/SR.23, para. 50.
[524] A/C.6/66/SR.25, para. 18.
[525] A/C.6/66/SR.25, para. 13.
[526] A/C.6/69/SR.20, para. 6.
[527] A/C.6/66/SR.25, para. 21.
[528] A/C.6/66/SR.21, para. 56.
[529] A/C.6/66/SR.23, para. 50.
[530] A/C.6/66/SR.22, para. 12.
[531] A/C.6/66/SR.23, para. 38.
[532] A/C.6/66/SR.24, paras. 112-113.
[533] A/C.6/66/SR.25, para. 33.
[534] A/C.6/66/SR.24, para. 82.
[535] A/C.6/69/SR.20, para. 102.
[536] A/C.6/66/SR.24, para. 27.
[537] A/C.6/65/SR.22, para. 65.

a precise overview of all aspects of the national response capacity which, in the circumstances of a disaster, could impose a heavy burden on the affected State.[538]

235. Israel was of the view that international law recognized that an affected State was best placed to determine the gravity of an emergency situation on its territory and to frame appropriate responses, and accordingly it called for further clarification with respect to the responsibility of the affected State when the disaster exceeded its national response capacity, and invited the Commission to consider the scope and content of such a duty.[539] The Netherlands[540] and Portugal[541] invited the Commission to consider a situation in which the affected State was unwilling to provide assistance, or where it failed in its duty to seek assistance. According to Austria[542] and the Russian Federation,[543] it was not clear what the consequence of a denial, on the part of the State, that the disaster exceeded its national capacity would be. Poland observed that a duty to seek assistance raised the question of whether a State that did not seek external assistance would by that fact alone breach international law and, if so, what form of reparation such a violation would entail.[544] France,[545] Austria,[546] Malaysia,[547] the Russian Federation[548] and the United Kingdom[549] affirmed that under current international law there was no legal obligation on the affected State to seek assistance. Italy considered it useful to provide incentives to the affected State to seek assistance at an even earlier stage, as soon as it appeared appropriate to give prompt relief to the victims.[550]

236. According to Indonesia, the duty to seek assistance undermined sovereignty and was inconsistent with the right of the affected State not to consent to external assistance.[551]

237. Pakistan asserted that the assumption of the draft article that States might not seek external assistance did not reflect the current practice of international cooperation in the event of a disaster.[552] The Islamic Republic of Iran suggested reformulating the draft article so as to provide that the affected State "should" seek assistance.[553] China was of the view that the relationship between the affected State and the international community could not be simply defined as one between duties and rights, whereby the duty of the former to seek assistance and the right of the latter to offer it would be artificially set against each other, thereby negatively

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[538] A/C.6/66/SR.23, para. 48.
[539] A/C.6/66/SR.23, para. 33.
[540] A/C.6/66/SR.23, para. 48.
[541] A/C.6/66/SR.24, para. 66.
[542] A/C.6/66/SR.23, para. 23.
[543] A/C.6/69/SR.19, para. 107.
[544] A/C.6/67/SR.19, para. 73.
[545] A/C.6/66/SR.23, para. 38.
[546] A/C.6/66/SR.23, para. 23.
[547] A/C.6/66/SR.24, para. 114.
[548] A/C.6/66/SR.24, para. 37.
[549] A/C.6/66/SR.23, para. 45.
[550] A/C.6/66/SR.21, para. 91.
[551] A/C.6/66/SR.24, para. 70.
[552] A/C.6/66/SR.25, para. 7.
[553] A/C.6/66/SR.24, para. 50, and A/C.6/67/SR.20, para. 15.

affecting international cooperation.[554] It considered it best to avoid the term "duty".[555]

238. The Islamic Republic of Iran was of the view that the obligation to cooperate was limited to subjects of international law, to the exclusion of non-governmental organizations, and that once the State accepted the relief it retained, in accordance with its domestic law, the right to direct, control, supervise and coordinate the assistance provided in its territory.[556]

239. Thailand suggested reformulating the draft article as follows: "To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from, as appropriate, among other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations." In its opinion, that wording would clarify that the affected State did have discretion as to which sources of assistance to accept, as opposed to what was implied by the words "as appropriate" in the existing draft.[557]

240. The observer delegation of IFRC, while supporting the provision, expressed the need to clarify that the expression "as appropriate" meant that States could choose which actors to seek assistance from, and remarked that, on the basis of its experience, States could and should be selective. In its view, such an approach would minimize the problems associated with inappropriate assistance.[558]

2. Comments and observations received in response to the request of the International Law Commission

241. While it recognized that all States were obliged to provide for an appropriate disaster relief system in order to protect their citizens, Austria was not convinced that the formulation struck the right balance between State sovereignty and the protection of the individuals. It maintained that, while the affected State should seek assistance to meet its responsibility in cases in which the national response capacity was exceeded, it was not under a duty to do so. Also, it pointed out that the draft article should not be understood to exclude the right of a State to seek assistance in the case of disaster where its response capacity had not been exceeded.

242. Cuba proposed changing the reference to the affected State from having the "duty" to seek assistance to having the "right" to do so.

243. Ecuador proposed including a reference to international appeals for assistance.

244. The European Union proposed the inclusion of a reference to the capacity to "cope" contained in the definition adopted by the United Nations Office for Disaster Risk Reduction. It further noted that the requirement that "a disaster exceeds its national response capacity" accorded a certain discretional flexibility to the affected State without referring to objective criteria, which would determine when the respective requirement was fulfilled.

245. While IFRC concurred with the assertion that States sometimes had a duty to seek external assistance, it did not believe that States necessarily had to accept it

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[554] A/C.6/66/SR.23, para. 42.

[555] A/C.6/69/SR.20, para. 25.

[556] A/C.6/66/SR.24, para. 51, and A/C.6/67/SR.20, para. 15.

[557] A/C.6/66/SR.24, para. 90.

[558] A/C.6/66/SR.25, paras. 41-42.

from anyone who chose to offer it. It was often valid for States to choose among providers with the capacity and competence to provide assistance of appropriate quality. It was suggested that the commentary could be more explicit in explaining that the duty was to seek help, not to seek it from any one external actor.

246. The Office for the Coordination of Humanitarian Affairs called for the insertion in the commentary to draft article 13 [10] of a reference to the role of the Emergency Relief Coordinator and Resident Coordinator, in accordance with General Assembly resolution 46/182, together with an explanation of the key procedures that the affected State should follow when requesting external assistance.

247. WFP welcomed the inclusion of draft article 13 [10].

3. Recommendation of the Special Rapporteur

248. The Special Rapporteur points out that the expression "as appropriate" at the end of draft article 13 [10] is not intended to grant to the affected State discretion over whether or not to seek assistance, but rather to choose which actors to accept it from. The Special Rapporteur is also of the view that the text of draft article 13 [10] would benefit from making explicit that it was up to the affected State to determine whether a disaster exceeded its national response capacity. The text can be streamlined by having recourse to the term "other assisting actor" which, as defined in draft article 4, subparagraph (c), covers both other competent intergovernmental organizations and relevant non-governmental organizations. For obvious reasons, the defined term must be qualified by the adjective "potential".

249. Consequently, the Special Rapporteur recommends that the first reading draft article 13 [10] be referred to the Drafting Committee, reformulated to read as follows:

> **Draft article 13**
> **Duty of the affected State to seek external assistance**
>
> When an affected State determines that a disaster exceeds its national response capacity, it has the duty to seek assistance from among other States, the United Nations and other potential assisting actors, as appropriate.

O. Draft article 14 [11]: Consent of the affected State to external assistance

> 1. The provision of external assistance requires the consent of the affected State.
>
> 2. Consent to external assistance shall not be withheld arbitrarily.
>
> 3. When an offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer.

1. Comments and observations made prior to the adoption of the first reading draft

250. Draft article 14 [11] was discussed in the Sixth Committee at the sixty-fifth to sixty-ninth sessions of the General Assembly.

251. Chile maintained that draft article 14 [11] reflected a balanced conception of the modern concept of sovereignty.[559] Colombia emphasized that draft article 14 [11] reflected a balance between conflicting interests and values.[560] Spain[561] was satisfied with the approach adopted, which it considered to be fully consistent with the 1989 resolution of the Institut de droit international.[562] Pakistan expressed the view that the assumption underlying draft article 14 [11], that States would not seek assistance from the international community, undermined the practice of international cooperation in the event of disaster.[563] The Russian Federation observed that the logic of draft article 14 [11] was unclear in that it implied that the entire process of providing assistance was launched not by the request of the affected State but by the right of other actors to offer such assistance and, as such, it addressed more the question of consent than the process of requesting assistance.[564]

252. The inclusion in paragraph 1 of the principle according to which external assistance could only be provided with the consent of the affected State was welcomed by Israel,[565] El Salvador,[566] China,[567] Austria,[568] France,[569] Malaysia,[570] India,[571] Romania,[572] Sri Lanka,[573] Indonesia[574] and the Sudan.[575]

253. Austria remarked that such consent had to be valid consent pursuant to article 20 of the 2001 articles on the responsibility of States for internationally wrongful acts[576] and recommend that this be mentioned in the commentary.[577] The Niger affirmed that the requirement to obtain the consent of the affected State was reasonable, but it could cause delay in cases where rapid reaction was needed.[578] Finland, on behalf of the Nordic States, indicated that, whereas draft article 14 [11] referred to the consent of the affected State for external assistance, it was important to underline that the affected State had the duty to ensure protection and assistance to those within its territory in the event of a disaster and to guarantee the access of humanitarian assistance to persons in need.[579]

254. Malaysia expressed its concern regarding the possibility of consent being implied in certain situations, in particular where no functioning government existed

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[559] A/C.6/66/SR.24, para. 9.
[560] A/C.6/66/SR.22, para. 25.
[561] A/C.6/69/SR.21, para. 38.
[562] "The protection of human rights and the principle of non-intervention in internal affairs of States", resolution of the Institut de droit international, session of Santiago de Compostela, 1989.
[563] A/C.6/66/SR.25, para. 7.
[564] A/C.6/69/SR.19, para. 108.
[565] A/C.6/66/SR.23, para. 33.
[566] A/C.6/66/SR.22, para. 13.
[567] A/C.6/66/SR.23, para. 42.
[568] A/C.6/66/SR.23, para. 24.
[569] A/C.6/66/SR.23, para. 39.
[570] A/C.6/66/SR.24, para. 116.
[571] A/C.6/66/SR.25, para. 13.
[572] A/C.6/66/SR.25, para. 19.
[573] A/C.6/66/SR.27, para. 20.
[574] A/C.6/69/SR.21, para. 8.
[575] A/C.6/69/SR.25, para. 11.
[576] *Yearbook 2001, vol. II (Part Two)*, para. 76. See also General Assembly resolution 56/83 of 12 December 2001, annex, as corrected by A/56/49(Vol. I)/Corr.4.
[577] A/C.6/66/SR.23, para. 24.
[578] A/C.6/66/SR.23, para. 54.
[579] A/C.6/66/SR.21, para. 60.

to provide consent. Whereas such a situation could be acceptable from a humanitarian standpoint, given that no consent could be given when a government did not exist, it did, however, raise the question of who was to decide whether a functioning government existed.[580]

255. Regarding paragraph 2, Chile supported maintaining the word "withheld", as proposed by the Commission, which denoted an obligation on the affected State, balanced with the sovereign right recognized in paragraph 1.[581] Paragraph 2 was supported by Austria[582] and the United Kingdom,[583] which noted that, in the context of armed conflict, such a refusal could amount to a breach of international humanitarian law. The Sudan agreed that it was important to clarify that consent should not be withheld arbitrarily and recommended that it be made clear that the failure to consent should not prejudice affected persons.[584] The possibility of exploring the legal consequences in cases where consent was arbitrarily withheld was suggested by the United Kingdom,[585] Ireland[586] and Portugal, which maintained that such a refusal could give rise to an internationally wrongful act if it undermined the rights of affected persons under international law.[587] Austria noted that, under existing international law, other States would not be able to act without the consent of the affected State, even if the latter incurred international responsibility by refusing assistance.[588]

256. Ireland recommended that paragraph 2 also include a reference to withdrawal of consent, such that consent to external assistance may not be withheld or withdrawn arbitrarily.[589] China suggested a reformulation of paragraph 2. In its opinion, the words "shall not" should be changed to "should not", given that neither customary international law nor State practice recognized a legal obligation on affected States to accept external assistance.[590] For the Russian Federation, the purpose of the draft article was to stipulate the moral and political duty of an affected State rather than a legal obligation that would entail international legal consequences in the event of non-compliance.[591]

257. Israel,[592] Argentina[593] and India[594] suggested further clarification on the meaning of the notion of arbitrariness. Malaysia[595] and Ireland[596] sought clarification as to who was to decide on the seriousness of the situation requiring assistance and who would decide whether there was an arbitrary refusal of consent. The United Kingdom pointed to the difficulty in ascertaining arbitrariness, given

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[580] A/C.6/66/SR.24, para. 116.
[581] A/C.6/66 SR.24, para. 9.
[582] A/C.6/66/SR.23, para. 24.
[583] A/C.6/69/SR.19, para. 166.
[584] A/C.6/69/SR.25, para. 11.
[585] A/C.6/66/SR.23, para. 45.
[586] A/C.6/66/SR.25, para. 22.
[587] A/C.6/65/SR.23, para. 13 and A/C.6/66/SR.24, para. 66.
[588] A/C.6/66/SR.23, para. 24.
[589] Statement of 27 October 2014, 19th meeting, sixty-ninth session of the General Assembly.
[590] A/C.6/66/SR.23, para. 42.
[591] A/C.6/66/SR.24, para. 37.
[592] A/C.6/66/SR.23, para. 33.
[593] A/C.6/66/SR.25, para. 10.
[594] A/C.6/67/SR.20, para. 20.
[595] A/C.6/66/SR.24, para. 118, and A/C.6/69/SR.21, para. 48.
[596] A/C.6/66/SR.25, para. 22.

that the receipt of assistance would no doubt involve numerous difficult, economic, logistical and international relations issues.[597] France queried the exact scope of the provision.[598] The Islamic Republic of Iran expressed its concern that the term "arbitrarily" could lead to subjective biases and judgements concerning the behaviour of the affected State, which was within its rights to decide to refrain from accepting foreign assistance, and suggested referring to the relevant principles of the Charter of the United Nations to ensure that the cause of humanitarian assistance would not be abused by impinging on the sovereign rights of the affected State or interfering in its internal affairs.[599] It suggested that reference be made instead to the notion of "good faith",[600] so that the paragraph would be reformulated as "consent to external assistance shall be decided in good faith". It also expressed the view that the refusal to consent could not be regarded as arbitrary if the affected State had previously accepted appropriate assistance from another source.[601] Portugal called for the circumstances in which an affected State could refuse offers of assistance to be clearly defined.[602] South Africa requested that provision be made in the draft articles for situations in which an affected State might reject offers of assistance because it had the capacity and resources to address the situation itself or because it had already accepted assistance from another State or actor.[603]

258. Greece proposed including a specific explanation in the draft article, according to which "consent is considered to be arbitrary, in particular when in contravention of article [6 [8]]".[604] Thailand suggested revising the paragraph to read "consent to external assistance offered in good faith and exclusively intended to provide humanitarian assistance shall not be withheld arbitrarily and unjustifiably".[605] Algeria was of the view that the notion of a reasonable time frame in determining arbitrariness should be considered.[606] The Netherlands proposed the possibility of using the term "unreasonably" rather than the current word "arbitrarily".[607]

259. Whereas the observer delegation of IFRC supported the conditionality on the power to withhold consent provided in paragraph 2, it remained concerned that the text did not clearly indicate that affected States might be selective about the external assistance they accept.[608]

260. With regard to paragraph 3, Portugal requested further clarification on the affected State making its decision regarding the offer of assistance "whenever possible". It suggested that the Commission specify what would occur in a scenario where it was not possible to make a decision and what the consequences would be with regard to the protection of persons.[609] El Salvador was of the view that the expression "whenever possible" was vague and could allow affected States

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[597] A/C.6/66/SR.23, para. 45.

[598] A/C.6/66/SR.23, para. 39.

[599] A/C.6/66/SR.24, para. 52.

[600] Statement of 2 November 2012, 20th meeting, sixty-seventh session of the General Assembly, and statement of 5 November 2013, 26th meeting, sixty-eighth session of the General Assembly.

[601] A/C.6/66/SR.24, para. 52.

[602] A/C.6/66/SR.24, para. 66.

[603] A/C.6/67/SR.19, para. 84.

[604] A/C.6/66/SR.24, para. 25.

[605] A/C.6/66/SR.24, para. 91.

[606] A/C.6/66/SR.25, para. 33.

[607] A/C.6/66/SR.23, para. 48.

[608] A/C.6/66/SR.25, para. 43.

[609] A/C.6/66/SR.24, para. 66.

excessive discretion in communicating their decision regarding the acceptance of assistance. According to El Salvador, the content of paragraph 3 should be divided to express two distinct ideas: first, that the State had a duty to communicate its response to an offer of assistance in a timely manner, bearing in mind the type of disaster that had occurred and the needs of the population and, second, that in extreme situations, States might, for good reasons, not be able to respond immediately, or indeed at all, to an offer of assistance.[610] According to Thailand, the phrase "whenever possible" should also be understood to cover the situation where the affected State could not make its decision known because it might jeopardize international relations with another State.[611] France observed that it would appear to be difficult to require the affected State to provide its reasons in the event of refusal of assistance.[612]

261. According to IFRC, there was no indication in the draft articles as to who would make formal offers of assistance to an affected State. Neither IFRC nor its 186 member national societies generally made formal offers to States; many non-governmental organizations also rarely made formal offers to States concerning the assistance they provided. Paragraph 3 referred to offers made "in accordance with the present draft articles", however, no procedure for making offers had been included in the draft articles. Moreover, notwithstanding the explanations in the commentary, it was unclear whether any temporal deadline for responding to offers was implied in paragraph 3. It called for making a reference to such decisions being made as quickly as possible in the light of the potentially urgent humanitarian needs.[613]

262. The Netherlands proposed reversing the order of draft articles 14 [11] and 16 [12] to have the right of third States and other entities to offer assistance to the affected State appear first, followed by the duty of the affected State not to arbitrarily withhold consent to such assistance.[614]

2. Comments and observations received in response to the request of the International Law Commission

263. Reiterating its agreement with the basic requirement of consent of the affected State, Australia expressed reservations, however, about the duty placed on the affected State not to "arbitrarily" withhold its consent. In its view, no such duty existed under customary international law. It was not clear against which standards, and by whom, any perceived "arbitrariness" would be measured and whether it would be beneficial in practice to place on States a duty to seek or accept external assistance when they may be reluctant to do so. Failure to comply with any such duty would not give rise to any corresponding right of intervention by other States wishing to provide assistance.

264. Austria reiterated its endorsement of the principle of consent, which in its view should be valid consent in the sense of article 20 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Austria also concurred with the duty not to deny consent arbitrarily. Even if consent was denied arbitrarily,

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[610] A/C.6/66/SR.22, para. 13.

[611] A/C.6/66/SR.24, para. 91.

[612] A/C.6/66/SR.23, para. 39.

[613] A/C.6/66/SR.25, para. 43.

[614] A/C.6/66/SR.23, para. 48.

under existing international law no other States would be entitled to substitute for the affected State and act without its consent, irrespective of any international responsibility incurred by the affected State. It also welcomed the duty of the affected State to publish its decision on any offer of assistance.

265. Finland, on behalf of the Nordic States, noted with satisfaction the requirement that consent to external assistance shall not be withheld arbitrarily. It recommended that the term "arbitrarily" be clearly defined in the commentary.

266. Germany was of the view that, although the consent of the affected State shall not be withheld arbitrarily, consent was nevertheless an indispensable requirement for every provision of external assistance.

267. Qatar proposed adding the phrase "or in a manner that indicates it was so withheld" at the end of paragraph 2.

268. The European Union preferred a case-by-case approach, suggesting that the commentary provide more detail on what was meant by the phrase "withheld arbitrarily" with regard to consent and what kind of motivation should be deemed acceptable, if an affected State refused assistance. It suggested that the commentary to draft article 14 [11] could include a link to draft article 15 [13] concerning the formulation of conditions on the provision of external assistance, given that the formulation of such conditions could contain the justification for refusing assistance or withholding consent.

269. IFRC concurred with the basic assertion that, whereas States' consent was required prior to the provision of outside assistance, such consent should not be withheld arbitrarily. IFRC was of the view that the rule set out a reasonable approach, leaving significant discretion with the State but affirming that such discretion should be not be abused in the face of humanitarian need. Given the opposition to the provision expressed by a number of States, however, it feared that its inclusion in the draft articles could jeopardize support for the project overall and noted that the problem of States refusing all offers of international aid was relatively rare in the context of disasters.

270. The Office for the Coordination of Humanitarian Affairs proposed rearranging the order of draft articles 14 [11] to 17 [14] to first refer to offers of external assistance, then consent, facilitation and conditions. The Office expressed support for paragraph 2 and noted that, in certain circumstances, an arbitrary withholding of consent might amount to a breach of international human rights law. It recommended that the provision also include a reference to the withdrawal of consent, such that consent to external assistance shall not be withheld *or withdrawn* arbitrarily. With regard to paragraph 3, the Office proposed including a requirement as to timeliness, such that the affected State shall, whenever possible, make known its decision regarding the offer within a reasonable time frame.

271. WFP also recommended the rearrangement of the sequence of 14 [11] to 16 [12].

272. The World Bank expressed the concern that the introduction of due diligence type requirements could lead to delays in the provision of assistance.

3. Recommendation of the Special Rapporteur

273. The Special Rapporteur draws attention to the suggestion, with which he agrees, to rearrange the order of draft articles 14 [11] to 16 [12]. As currently

numbered, the sequence he proposes is as follows: 16 [12], 14 [11], 15 [13]. For the purposes of the present report, however, and in order to avoid confusion, he will deal with each of those three draft articles in the order in which they appear in the first reading draft, with the understanding that their eventual referral to the Drafting Committee will be on the assumption that their order and numbering will be as he proposes.

274. Suggestions were made regarding the text of paragraphs 2 and 3 of draft article 14 [11]. With regard to paragraph 2, whereas some reservations were expressed regarding the provision requiring that consent not be arbitrarily withheld, only one suggestion was made for its suppression, on the grounds of expediency. However, for the Special Rapporteur and for many States and international organizations, that provision finds its rightful place in draft article 14 [11]. In this connection, he draws attention to the Secretary-General's request to the Office for the Coordination of Humanitarian Affairs, made in his report on the protection of civilians in armed conflict (S/2013/689), to engage in further analysis on the issue of arbitrary withholding of consent to humanitarian relief operations and the consequences thereof. As a result, as indicated in the introduction above, the guidelines on the law relating to humanitarian relief operations in situations of armed conflict have recently been completed, which deal in detail with the issue. Although the guidance document has been prepared in the context of armed conflict, its analysis of the arbitrary withholding of consent offers helpful insight that gives additional support to the inclusion of a similar provision in the final text of the draft articles on the protection of persons in the event of disasters.

275. With respect to some suggestions made for improvement of the text of paragraph 2, the Special Rapporteur sees no advantage in replacing the standard term "arbitrary" with "unreasonable" or "unjustified", given that those two latter terms are, in fact, component elements of the accepted meaning commonly attributed to what is "arbitrary". He agrees, however, that, as suggested, the text of paragraph 2 would benefit from adding a reference to the withdrawal of consent.

276. With regard to paragraph 3, the Special Rapporteur points out that the reference to "in accordance with the present draft articles" refers to the conformity of any offer of assistance with the letter and spirit of the draft articles and has nothing to do with compliance with any set formality not established by the draft. Good faith offers of assistance can be advanced in whatever form the potential assisting actor finds that can best serve their intended purpose. The Special Rapporteur, accordingly, finds merit in the suggestion to make express reference in the text to "good faith" in its wider commonly accepted meaning and not necessarily in its stricter definition as a principle of international law found in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. He can also support the suggestion to introduce the element of "timeliness" into the text.

277. In the light of the foregoing, the Special Rapporteur recommends that the amended first reading text of draft article 14 [11] be referred to the Drafting Committee, to read as follows:

Draft article 14
Consent of the affected State to external assistance

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld or withdrawn arbitrarily.

3. When a good faith offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer in a timely manner.

P. Draft article 15 [13]: Conditions on the provision of external assistance

> The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law and the national law of the affected State. Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

1. Comments and observations made prior to the adoption of the first reading draft

278. Draft article 15 [13] was discussed in the Sixth Committee at the sixth-seventh, sixty-eighth and sixty-ninth sessions of the General Assembly.

279. The need for any conditions on the provision of external assistance to be reasonable and in accordance with the duties of States to protect persons in their territory was affirmed by Slovenia.[615] South Africa also mentioned that only conditions that were reasonable, deemed necessary in the circumstances and in compliance with the provisions of the domestic law of the affected State and international law could be imposed by an affected State to ensure the realization of the primary goal of the protection of its people.[616] According to Indonesia, to strike a proper balance between a State's duty to protect its people in the event of disaster and its right to uphold its sovereignty, the conditions imposed by the affected State should be reasonable and not undermine the duty to protect.[617]

280. Mexico[618] and Portugal[619] maintained that conditions on the provision of external assistance had to be imposed in good faith, such that the affected State did not arbitrarily withhold consent for external assistance, given that to do so would amount to a breach of its obligation to ensure the protection of its people. The Russian Federation indicated that the formulation of draft article 15 [13] allowed the affected State a broad freedom of interpretation in formulating the conditions of such assistance and created the risk that references to international and national law

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[615] A/C.6/67/SR.18, para. 127.
[616] A/C.6/67/SR.19, para. 84.
[617] A/C.6/67/SR.20, para. 29.
[618] A/C.6/67/SR.19, para. 19.
[619] A/C.6/67/SR.19, para. 61.

could be made in bad faith, with the purpose of preventing the provision of assistance.[620] Portugal suggested that the Commission could consider situations where the conditions proved to be unreasonable or where they restricted the assistance in a way that adversely affected its quality and did not offer proper protection to the persons affected by disaster, including cases involving violations of international law.[621] It was also of the view that it was worth considering the consequences of an incorrect assessment of the needs of the persons affected or a situation in which the affected State could not make such an assessment.[622]

281. Austria emphasized that draft article 15 [13] should reflect the rules on cooperation contained in draft article 8 [5].[623] Accordingly, an affected State was not free to impose conditions unilaterally; such conditions had to be the result of consultations between the affected State and the assisting actors, taking into account the general principles governing such assistance and the capacities of the assisting actors. The need for the affected State to undertake a needs assessment, preferably in cooperation with the relevant humanitarian agencies and assisting States, was suggested by Slovenia.[624]

282. Thailand, expressing its support for the formulation as adopted on first reading, was of the view that assisting actors should be sensitive to local factors, including food, culture, religion, language and gender. It observed that the conditions within an affected State could vary according to time frame and limits on quality and quantity of aid owing to the specific circumstances, need, security and safety of the country.[625]

283. Pakistan was of the view that an affected State should be able to impose whatever conditions it deemed necessary before accepting an offer of external assistance. It explained that the affected State, having primary responsibility, would be far more concerned than external actors with providing expedited facilitation of assistance and protection for persons in its territory.[626] The Islamic Republic of Iran maintained that, whereas the affected State had an obligation to facilitate the provision of humanitarian assistance, it could not be expected to yield to hefty legal commitments.[627] The Netherlands indicated that the draft article could place more emphasis on the need for the affected State to remove obstacles in national law that would hamper the speedy provision of assistance in cases where national capacity was insufficient.[628]

284. Mexico maintained that conditions on the provision of external assistance had to be in accordance with international law and national legislation,[629] as also affirmed by Spain,[630] France,[631] Chile[632] and Switzerland. Switzerland also pointed

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[620] Statement of 2 November 2012, 19th meeting, sixty-seventh session of the General Assembly.

[621] A/C.6/67/SR.19, para. 61.

[622] Ibid.

[623] A/C.6/67/SR.18, para. 85.

[624] A/C.6/67/SR.18, para. 127.

[625] A/C.6/67/SR.19, para. 41.

[626] A/C.6/67/SR.20, para. 32.

[627] Statement of 2 November 2012, 20th meeting, sixty-seventh session of the General Assembly.

[628] A/C.6/67/SR.19, para. 29.

[629] A/C.6/67/SR.19, para. 19.

[630] A/C.6/67/SR.18, para. 117.

[631] A/C.6/67/SR.19, para. 95.

[632] A/C.6/67/SR.19, para. 12.

to the linkage with the humanitarian principles included in draft article 7 [6].[633] Slovenia emphasized that conditions must also not contravene the principles of humanity, neutrality, impartiality and non-discrimination or the basic human rights applicable in disaster situations.[634]

285. With regard to the term "national law", Malaysia observed that disasters were addressed by affected States not only through national legislation, but also through administrative national frameworks and policies. Malaysia thus proposed that the scope of draft article 15 [13] be widened to indicate that the formulation of such conditions should also be in accordance with national law and the applicable national policies of the affected State.[635]

286. On "the identified needs of the persons affected by disasters", the European Union indicated that, under a needs-based approach, such a formulation appeared too vague: instead of only "taking into account" the identified needs, conditions should "actually reflect" the identified needs of the affected persons.[636] The United Kingdom agreed that a needs-based approach was preferable to a rights-based one.[637] El Salvador welcomed the use of the term "identified needs" as opposed to "identifiable needs", given that the needs of a population in the wake of a disaster existed as such, irrespective of the ease or difficulty with which they could be identified.[638] According to Portugal, reference to the identified needs of the persons affected by disaster and the quality of the assistance limited the possibility of broad interpretations and the imposition of random conditions.[639] Hungary welcomed the recognition of the obligation of the affected State to take into account the identified needs of the persons affected by disasters when formulating the conditions of external assistance.[640]

287. The Russian Federation objected to the reference, in paragraph 8 of the commentary, to the need for a procedure of objective assessment of the assistance required, which it considered as suggesting that the evaluation of the affected State could not be trusted.[641] Conversely, Ireland supported paragraph 8 of the commentary.[642]

288. The European Union proposed adding a reference to the special needs of women and in particular vulnerable or disadvantaged groups, including children, older persons and persons with disabilities, in the text of draft article 15 [13].[643]

289. With regard to the final sentence of draft article 15 [13], Malaysia confirmed that the identification of scope and type of assistance and the subsequent indication of the same to the external parties providing assistance was an essential step in the process of responding to a disaster in an affected State.[644] It was of the view that the

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[633] A/C.6/67/SR.18, para. 79.
[634] A/C.6/67/SR.18, para. 127.
[635] A/C.6/67/SR.19, para. 111.
[636] A/C.6/67/SR.18, para. 72.
[637] A/C.6/67/SR.19, para. 66.
[638] A/C.6/67/SR.19, para. 49.
[639] A/C.6/67/SR.19, para. 61.
[640] A/C.6/67/SR.20, para. 52.
[641] A/C.6/68/SR.25, para. 39.
[642] Statement of 27 October 2014, 19th meeting, sixty-ninth session of the General Assembly.
[643] A/C.6/67/SR.18, para. 72. See also Romania, in A/C.6/68/SR.24, para. 82.
[644] Statement of 2 November 2012, 19th meeting, sixty-seventh session of the General Assembly.

duty/right of the affected State to indicate the scope and type of assistance sought should be addressed in a draft article separate from draft article 15 [13].[645] Pakistan agreed that the affected State should indicate the scope and type of assistance sought from other States.[646] Hungary welcomed the obligation of the affected State to take into account the quality of assistance when formulating the conditions of external assistance.[647] Singapore requested that the Commission consider the situation where an affected State received unsolicited offers of assistance. According to Singapore, it was unclear whether, in such a situation, an affected State could specify conditions without having to indicate the scope and type of assistance sought.[648] The Russian Federation suggested that the same limitations on formulating conditions should be imposed on States that provide assistance.[649]

290. In the view of IFRC, the third and fourth sentences of draft article 15 [13] could be read to imply that States should determine their "conditions" on aid on an ad hoc basis, after each disaster. IFRC recommended that States carefully consider and design the types of requirements that they would impose on external aid providers in advance of a disaster striking, as a preparedness measure.[650] Ideally, those conditions would draw upon widely-accepted standards of humanitarian quality and conduct, such as those contained in the Humanitarian Charter and Minimum Standards in Humanitarian Response of the Sphere Project[651] and the minimum standards in humanitarian response contained in the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief.[652] The Republic of Korea suggested that every State put into place domestic measures and national legislation, with emphasis placed on prevention, before disasters occur.[653]

2. Comments and observations received in response to the request of the International Law Commission

291. Austria reiterated its view that the conditions under which assistance is provided should not be the result of the unilateral decision of the affected State, but that of consultations between the affected State and the assisting actors, taking into account the general principles governing assistance and the capacities of the assisting actors.

292. Cuba proposed adding the following sentence at the end of the draft article: "The provision of external assistance cannot be dependent on elements that undermine the sovereignty of the affected State."

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[645] Ibid.

[646] A/C.6/67/SR.20, para. 32.

[647] A/C.6/67/SR.20, para. 52.

[648] A/C.6/68/SR.25, para. 109.

[649] A/C.6/68/SR.25, para. 39.

[650] A/C.6/67/SR.20, para. 63.

[651] The Sphere Project: Humanitarian Charter and Minimum Standards in Disaster Response (Geneva: The Sphere Project, 2000, revised in 2011).

[652] Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, annex VI to the report entitled "Principles and response in international humanitarian assistance and protection, document 95/C.II/2/1, 26th International Conference of the Red Cross and Red Crescent, Geneva, 3-7 December 1995.

[653] A/C.6/67/SR.18, para. 122.

293. The Czech Republic agreed that the affected State could place conditions on the provision of external assistance and indicate the scope and type of assistance sought. It recommended that it be stated in the commentary that the affected State may indicate the general conditions of such assistance, inter alia, transport and security conditions, points of contacts.

294. Finland, on behalf of the Nordic States, was of the view that the key aspect in draft article 15 [13] was the right of the affected State to deny unwanted or unneeded assistance and to determine the appropriateness of assistance. It suggested elaborating further on this aspect of humanitarian assistance in the commentary, by indicating that unsolicited or inappropriate assistance had been a problem in many affected States. The Nordic States also suggested that the expression "take into account" be replaced with "verifiably reflect".

295. The European Union was of the view that the right to apply conditions to assistance was not unlimited and had to be exercised in accordance with the draft articles and applicable rules of international and national law. It noted that, whereas reference was made to "needs" and "quality", the notion of "conditions" remained vague. It suggested that the Commission could either use a stronger formulation than "take into account" or add more explanations in the commentary. It also suggested that its relationship to draft article 17 [14] on the facilitation of external assistance be further clarified in the commentary.

296. ICRC distinguished the approach taken in the draft article, which it described as conferring on the affected State a "pick and choose" option, from the position prevailing under international humanitarian law.

297. IFRC observed that the draft article left it largely up to affected States to articulate any other "conditions" of assistance. In its view, this provided little incentive for a harmonized approach with regard to the quality of relief and failed to commit providers to minimum standards within the scope of this international instrument. It recommended that the draft article be enhanced with greater detail, taking inspiration from the IFRC Guidelines and binding international instruments.

298. IOM was of the view that the provision of external assistance should take into account the needs of persons affected by a disaster, in line with draft article 2 [2], including the special needs of vulnerable persons, which it suggested should include displaced persons and migrants (non-nationals). It recommended that the commentary indicate that conditions imposed on the provision of external assistance should not disproportionally limit the right of foreign States to provide assistance to their nationals caught in a crisis situation.

3. Recommendation of the Special Rapporteur

299. For the Special Rapporteur, the use of the term "national law" is not limited to legislation but extends to other regulatory options. The requirement that conditions must be in accordance with national law, which pre-exists the disaster, can be fulfilled either in advance or after its occurrence. Furthermore, the Special Rapporteur fails to see what advantage would be gained by moving unchanged the last sentence of draft article 15 [13] into a separate draft article. But if separation is meant to add something, the same result can be achieved by doing so within the draft article itself. In addition, he can subscribe to the suggestion to replace the expression "take into account" with "reflect".

300. The Special Rapporteur thus recommends that the first reading text of draft article 15 [13], as amended, be referred to the Drafting Committee, to read as follows:

Draft article 15
Conditions on the provision of external assistance

1. The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law, and the national law of the affected State. Conditions shall reflect the identified needs of the persons affected by disasters and the quality of the assistance.

2. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Q. Draft article 16 [12]: Offers of external assistance

In responding to disasters, States, the United Nations, and other competent intergovernmental organizations have the right to offer assistance to the affected State. Relevant non-governmental organizations may also offer assistance to the affected State.

1. Comments and observations made prior to the adoption of the first reading draft

301. Draft article 16 [12] was discussed in the Sixth Committee at the sixty-sixth to sixty-ninth sessions of the General Assembly.

302. Finland, on behalf of the Nordic States,[654] Slovenia,[655] the Czech Republic,[656] Austria,[657] the Russian Federation,[658] Romania,[659] France[660] and Poland[661] expressed their support for draft article 16 [12]. El Salvador considered that the question of whether there existed a right to offer assistance or simply a capacity to do so on the part of third actors merited further consideration.[662] The United States remarked that the question of the extent to which third actors had a right to offer assistance was likely to attract a wide range of divergent views and advised the Commission to structure its work in a way that would avoid the need for a definitive pronouncement on such issues.[663] Similarly, Greece considered the use of the term "right" to be confusing and suggested reformulating the draft article with a focus on the constructive character of the offer rather than on its legal qualifications.[664] Singapore,[665] Israel,[666] Pakistan[667] and Poland[668] doubted that offers of assistance

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[654] A/C.6/66/SR.21, para. 60.
[655] A/C.6/66/SR.20, para. 12.
[656] A/C.6/66/SR.23, para. 19.
[657] A/C.6/66/SR.23, para. 25.
[658] A/C.6/66/SR.24, para. 37.
[659] A/C.6/66/SR.25, para. 19.
[660] A/C.6/67/SR.19, para. 95.
[661] A/C.6/68/SR.24, para. 107.
[662] A/C.6/69/SR.20, para. 90.
[663] A/C.6/66/SR.21, para. 69.
[664] A/C.6/67/SR.19, para. 57.
[665] A/C.6/66/SR.21, para. 75.
[666] A/C.6/66/SR.23, para. 33.
[667] A/C.6/66/SR.25, para. 7.
[668] A/C.6/66/SR.21, para. 86.

were permissible as a right. According to Singapore, the focus should be on the duty of the affected State to give consideration to the offers of assistance received.[669] In its view, the draft article was not strictly necessary. A similar view was expressed by Indonesia.[670] The United Kingdom considered the provision to be superfluous in that, as a matter of sovereignty, States could always offer whatever they wanted.[671] The Russian Federation maintained that the provision restated the obvious.[672] India remarked that the question of whether such a right existed in the context of international cooperation needed to be clarified, bearing in mind that the guiding principle for receiving disaster assistance was the consent of the affected State.[673]

303. According to Mexico, the exercise of the right to offer assistance was subject to two constraints: first, only subjects of international law were entitled to exercise it and, second, it had to be exercised in accordance with the principle of non-interference in internal affairs.[674] South Africa maintained that the draft article should clearly state that the asserted right to offer assistance must not interfere in the internal affairs of the affected State.[675] El Salvador proposed reformulating the draft article to extend the right to offer assistance to all persons, both natural and legal.[676] Chile was of the view that offers of assistance should not be accompanied by conditions that were unacceptable to the affected State or delivered on a discriminatory basis.[677]

304. Sri Lanka,[678] Thailand[679] and Poland[680] proposed reformulating the draft article to state that it was a duty of the international community to provide assistance. Hungary supported the notion that the duty of cooperation with the affected State should include a duty to provide assistance, but it considered it wiser to formulate such an obligation as a strong recommendation.[681] Malaysia asserted that the duty to seek assistance set out in draft article 13 [10] would need to be mutually supported by a corresponding duty to assist, but it considered that the latter duty could not be categorically imposed on States and that States should be permitted to respond to requests for assistance in all manners that they deemed fit.[682] Accordingly, it proposed that the draft article read: Without prejudice to the right of the affected State to consent to/accept offers of assistance, in responding to disasters, States, the United Nations, other competent intergovernmental organizations and relevant nongovernmental organizations may offer assistance to the affected State if the disaster exceeds its national response capacity.[683]

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[669] A/C.6/66/SR 21, para. 75.
[670] A/C.6/68/SR.25, para. 61.
[671] A/C.6/66/SR.23, para. 45.
[672] A/C.6/68/SR.25, para. 39.
[673] A/C.6/67/SR.20, para. 20.
[674] A/C.6/66/SR.22, para. 20.
[675] A/C.6/67/SR.19, para. 84.
[676] A/C.6/66/SR.22, para. 14.
[677] A/C.6/66/SR.24, para. 10.
[678] A/C.6/66/SR.27, para. 20.
[679] A/C.6/67/SR.19, para. 40.
[680] A/C.6/66/SR.21, para. 86.
[681] A/C.6/66/SR.24, para. 59.
[682] A/C.6/66/SR.24, para. 120.
[683] A/C.6/67/SR.19, para. 110.

305. Ireland,[684] Slovenia,[685] Germany,[686] Greece,[687] the Netherlands,[688] Spain[689] and Belgium[690] expressed the view that, under contemporary international law, there existed no legal obligation on third States to provide assistance. Belgium was of the view that, if the Commission were to propose such an obligation, it would have to be one of conduct not of result.[691]

306. Singapore,[692] the Czech Republic,[693] Pakistan[694] and Germany[695] expressed their opposition to the treatment of States, intergovernmental organizations and non-governmental organizations on the same juridical footing. Austria welcomed the distinction introduced in the wording of the draft article as adopted on first reading.[696] The United States[697] proposed eliminating the distinction. In its view, whereas non-governmental organizations clearly had a different nature and legal status, that fact did not affect their capacity to offer assistance to an affected State in accordance with applicable law; indeed, they should be encouraged to do so. Accordingly, it proposed that the draft article be reworded to provide that States, the United Nations, intergovernmental organizations and non-governmental organizations "may offer assistance to the affected State, in accordance with international law and applicable domestic laws".[698] Germany affirmed that the draft article's formulation gave the impression that it conferred international rights directly on non-governmental organizations.[699]

307. The European Union reiterated its request that an express reference to regional integration organizations be made in the draft article or that a clarification that such entities were also covered by the reference be added in the commentary.[700] IFRC expressed the concern that neither it nor its member national societies were mentioned and suggested an appropriate clarification in the commentary.[701] Ireland welcomed the focus, in the commentary, on the role played by non-governmental organizations.[702]

2. Comments and observations received in response to the request of the International Law Commission

308. Austria expressed its concern about treating international organizations, non-governmental organizations and States on the same footing.

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[684] A/C.6/66/SR.25, para. 21.
[685] A/C.6/66/SR.20, para. 12.
[686] A/C.6/66/SR.23, para. 28.
[687] A/C.6/67/SR.19, para. 56.
[688] A/C.6/66/SR.23, para. 48.
[689] A/C.6/66/SR.23, para. 50.
[690] Comments submitted in writing, 8 May 2012.
[691] Ibid.
[692] A/C.6/66/SR.21, para. 75.
[693] A/C.6/66/SR.23, para. 19.
[694] A/C.6/66/SR.25, para. 7.
[695] A/C.6/66/SR.23, para. 28.
[696] A/C.6/68/SR.23, para. 62.
[697] A/C.6/68/SR.23, para. 47.
[698] Ibid.
[699] A/C.6/66/SR.23, para. 28.
[700] A/C.6/66/SR.21, para. 57.
[701] A/C.6/66/SR.25, para. 44.
[702] A/C.6/68/SR.25, para. 117.

309. Cuba proposed the addition of the following sentence: "In all cases, the affected State shall be the one that requests external assistance and the offer of such assistance may not be subject to conditions."

310. The Czech Republic observed that the commentary did not refer to offers of assistance by individuals.

311. Switzerland noted that the provision was more concerned with sovereignty and more intrusive towards humanitarian action than international humanitarian law.

312. ICRC noted that stating that non-governmental humanitarian agencies only may offer their services changes — and in a way denies — the right of initiative, to which impartial humanitarian organizations such as ICRC are entitled under international humanitarian law and which places such organizations in a privileged position.

313. IFRC considered it unnecessary to refer to a "right to offer", given that it addressed a problem that in practical terms did not exist. However, if the Commission were to keep the reference, additional wording qualifying or characterizing the assistance could be included, along the lines of article 3 (2) of the 1977 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts,[703] which provided that assistance shall not be used as a "justification for intervening, directly or indirectly, in the internal or external affairs" of the affected State. IFRC further reiterated its request for a clarification in the commentary concerning its relationship to its member national societies.

3. Recommendation of the Special Rapporteur

314. The Special Rapporteur observes that the use of the word "right" in draft article 16 [12] serves to emphasize that there exists no "duty" on the part of any assisting actor to provide assistance to an affected State. No duty exists for States either, when it is a question of simply making an offer of assistance, which is the proper subject matter of draft article 16 [12]. In this latter respect, it may not necessarily apply to competent intergovernmental organizations, relevant non-governmental organizations and other entities, if their constituent instruments mandate them to make such offers. The words "right" in relation to the first and "may" in relation to the second type of organization, was meant to recognize their respective powers of initiative to offer assistance. The different terminology was chosen in order to stress that States and intergovernmental organizations, on the one hand, and non-governmental organizations, on the other, were not being placed on the same footing.

315. However, such a distinction, exacerbated by the use of the word "right", may in reality be a false one when placed in the perspective of the offer of assistance. In this context, what matters is the possibility open to all assisting actors to make an offer of assistance, regardless of the legal grounds on which they can base their action. This being the case, it becomes possible to remove the explicit mention of "other competent intergovernmental organizations" and "relevant non-governmental organizations" by employing the term "other assisting actor", as defined in draft

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[703] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, United Nations, *Treaty Series*, vol. 112, p. 609.

article 4, subparagraph (c), qualified, as in draft article 13 [10], by the adjective "potential".

316. In the light of the foregoing, the Special Rapporteur recommends that the first reading text of draft article 16 [12] be referred to the Drafting Committee, reformulated to read as follows:

> **Draft article 16**
> **Offers of external assistance**
>
> In responding to disasters, States, the United Nations and other potential assisting actors may address an offer of assistance to the affected State.

R. Draft article 17 [14]: Facilitation of external assistance

> 1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding in particular:
>
> (a) civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and
>
> (b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and disposal thereof.
>
> 2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

1. Comments and observations made prior to the adoption of the first reading draft

317. Draft article 17 [14] was discussed in the Sixth Committee at the sixty-seventh, sixty-eighth and sixty-ninth sessions of the General Assembly.

318. Several States, including Slovenia,[704] Chile[705] and Japan,[706] expressed their general support for the content of the draft article, which was considered relevant for the effective and timely provision of disaster relief assistance. Belarus maintained that the commitment of all States, not just those directly affected, to promptly adopting appropriate legislative measures might be required by way of the progressive development of international law.[707]

319. Mexico was of the view that exemptions from compliance with domestic law should be provided for by the affected State under its laws, through mechanisms that were consistent with international law.[708] Indonesia maintained that, whereas the power to set conditions was essential for a State, the basis of cooperation was consultation and consent, elements that needed to be incorporated in the draft articles.[709]

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[704] A/C.6/67/SR.18, para. 128.
[705] A/C.6/67/SR.19, para. 13.
[706] A/C.6/69/SR.20, para. 54.
[707] A/C.6/69/SR.20, para. 82.
[708] A/C.6/67/SR.19, para. 19.
[709] A/C.6/67/SR.20, para. 29.

320. According to El Salvador, the decision to waive its domestic laws in order to ensure the provision of assistance was an internal matter for the affected State.[710] Given that the provision of humanitarian assistance in the wake of natural disasters was a dynamic process, Pakistan affirmed that the affected State should have a right to review the situation in the light of changes on the ground.[711]

321. Regarding the nature of measures to be adopted in this area, Malaysia took note of the understanding by the Drafting Committee that the reference to "take the necessary measures, within its national law", referred to, inter alia, legislative, executive and administrative measures, which could include actions taken under emergency legislation, and thus also extends to non-legal, practical measures designed to facilitate external assistance.[712]

322. The European Union suggested the deletion of the words "civilian and military" from draft article 17 [14], in order to refer only to "relief personnel",[713] whereas Switzerland expressed some concerns on the current wording, given that it appeared not to make any distinction between military aid and civilian aid.[714] Furthermore, taking into account that, under draft article 4, subparagraph (e), the term "relief personnel" extended its application to personnel sent for the purpose of providing disaster relief assistance or disaster risk reduction, Switzerland[715] and IFRC[716] emphasized that draft article 17 [14] equated persons sent to provide humanitarian relief in a time of crisis with those sent to assist in disaster risk reduction and development-related disaster preparedness in a time of calm, in particular with regard to the degree of protection required from affected States.

323. Austria supported the further elaboration of draft article 17 [14] in order to include additional issues in the list of measures aimed at facilitating the prompt and effective provision of external assistance. Reference was made to elements such as liability issues, reimbursement of costs, confidentiality, control, competent authorities, overflight and landing rights, telecommunications facilities, privileges and immunities and exemption from any requisition, export and transit restrictions.[717] The United States suggested adding to that list measures providing for the efficient and appropriate withdrawal and exit of relief personnel, goods and equipment upon the termination of external assistance.[718] Conversely, Poland suggested removing the phrase "privileges and immunities" from draft article 17 [14], paragraph 1 (a). Given that the list of measures presented in the provision was not exhaustive, Poland considered it undesirable to place emphasis on the issue of granting privileges and immunities to relief personnel.[719]

324. Pakistan supported the obligation for the affected State to facilitate the assistance by making its legislation and regulations available to ensure the

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[710] A/C.6/67/SR.19, para. 49.
[711] A/C.6/67/SR.20, para. 33.
[712] A/C.6/67/SR.19, para. 112.
[713] Statement of 27 October 2014, 19th meeting, sixty-ninth session of the General Assembly.
[714] A/C.6/67/SR.18, para. 79.
[715] A/C.6/69/SR.19, para. 129.
[716] A/C.6/69/SR.21, para. 74.
[717] A/C.6/67/SR.18, para. 86.
[718] A/C.6/68/SR.23, para. 49.
[719] A/C.6/68/SR.24, para. 107.

compliance of external actors with its national law and disaster preparedness framework, once the conditions of the affected State had been met.[720]

2. Comments and observations received in response to the request of the International Law Commission

325. Australia reiterated its query as to whether all States possessed the capacity to fulfil the duty embodied in the provision.

326. Austria reiterated its suggestion that the draft article should be completed with reference to other issues addressed by the legislation, such as confidentiality, liability issues, reimbursement of costs, privileges and immunities, control, competence of authorities, overflight and landing rights, telecommunications facilities, exemption from any requisition, import, export and transit restrictions and customs duties for relief goods and services and the prompt granting of visas or other authorizations free of charge.

327. The Netherlands agreed with the decision not to merge draft article 18 with draft article 17 [14].

328. The Association of Caribbean States was of the view that the phrase "prompt and effective" could put undue burden on the affected State, which may very well be operating in crisis mode with the legal suspension of national legislation, such as a state of emergency. During such times, the focus should be on providing support as opposed to focusing on the facilitation of assistance. In its opinion, the duty of care rested with the responding actors.

329. IFRC recommended that the draft article be enhanced with greater detail, taking inspiration from the IFRC Guidelines and binding instruments such as the Tampere Convention or the Agreement on Disaster Management and Emergency Response of the Association of Southeast Asian Nations (ASEAN).[721] It further observed that draft articles 4 and 17 [14] treated civilian and military responses exactly the same in terms of the facilitation of assistance. Many States and the humanitarian community, however, supported the approach of the Oslo Guidelines, which called for military assets to be used only when civilian alternatives were inadequate and, when they were used, they should seek to avoid the direct dissemination of aid, providing instead infrastructure, transport and other more indirect support.

330. The World Bank expressed the concern that the reference to "within its national law" in the chapeau could result in lengthy delays in the delivery of relief where national laws did not specifically allow exception in cases of emergency.

3. Recommendation of the Special Rapporteur

331. The Special Rapporteur again points to the non-exhaustive character of the issues listed, made clear in draft article 17 [14] by the use of "in particular" in paragraph 1 and "such as" in its subparagraphs (a) and (b). He therefore sees no need to burden its text by adding to the examples given a long, still non-exhaustive number of relevant issues, which may be mentioned in the corresponding

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[720] A/C.6/67/SR.20, para. 33.

[721] ASEAN Agreement on Disaster Management and Emergency Response, of 26 July 2005, ASEAN Documents Series 2005, p. 157 (hereinafter "ASEAN Agreement").

commentary. He is also not in favour of deleting the reference in subparagraph (a) to "privileges and immunities", a term of art which, given its comprehensive nature, is particularly apposite in the context of measures intended to facilitate external assistance. Furthermore, the Special Rapporteur considers that, given his recommended reformulation of the definition of the term "relief personnel" given in draft article 4, subparagraph (e), the term alone would suffice for paragraph 1 (a) of draft article 17 [14], without need for the qualifiers "civilian and military" or the addition of those set out in the Oslo Guidelines.

332. In the light of the foregoing, the Special Rapporteur recommends that, as reformulated, the first reading text of draft article 17 be referred to the Drafting Committee, to read as follows:

Draft article 17
Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding in particular:

(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement;

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

S. Draft article 18: Protection of relief personnel, equipment and goods

The affected State shall take the appropriate measures to ensure the protection of relief personnel, equipment and goods present in its territory for the purpose of providing external assistance.

1. Comments and observations made prior to the adoption of the first reading draft

333. Draft article 18 was discussed in the Sixth Committee at the sixty-ninth session of the General Assembly. General support was expressed for the provision, especially regarding the inclusion of the expression "appropriate measures", as indicated in the statements of South Africa,[722] New Zealand,[723] Spain,[724] Malaysia[725] and India.[726] The Nordic States,[727] Spain,[728] Indonesia,[729] the Netherlands[730] and

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[722] A/C.6/69/SR.20, para. 107.
[723] A/C.6/69/SR.21, para. 31.
[724] A/C.6/69/SR.21, para. 39.
[725] A/C.6/69/SR.21, para. 50.
[726] A/C.6/69/SR.21, para. 71.
[727] A/C.6/69/SR.19, para. 80.
[728] A/C.6/69/SR.21, para. 39.
[729] A/C.6/69/SR.21, para. 10.
[730] A/C.6/69/SR.20, para. 12.

South Africa[731] considered the obligation in question to be an obligation of conduct rather than of result.

334. Malaysia supported the insertion of the phrase "subject to the available resources and capabilities" after the opening phrase "the affected State shall". Such a reference would emphasize the fact that the standard of care or due diligence might vary depending on the circumstances, including the economic situation of the affected State, the availability of technical expertise and resources and the magnitude of the disaster.[732]

335. Taking into account that, under draft article 4, subparagraph (e), the definition of the term "relief personnel" included personnel sent for the purpose of providing disaster relief assistance or disaster risk reduction, Switzerland[733] and IFRC[734] suggested that draft article 18 call upon States to take extraordinary measures to protect the security of personnel — to exactly the same degree for a disaster risk reduction advisor in a time of calm as for humanitarian relief personnel in the midst of a crisis.

2. Comments and observations received in response to the request of the International Law Commission

336. Australia queried the capacity of all States to fulfil the duties embodied in the provision.

337. Finland, on behalf of the Nordic States, recommended some refinements to the commentary. It reiterated the Nordic States' agreement with the expression "appropriate measures", which it regarded as an obligation of conduct for the affected State rather than one of result, owing to the fact that several factors remained beyond the State's control in a disaster situation. It further proposed highlighting the duty of the affected State to take the best possible and reasonable measures available in the particular circumstances to protect the humanitarian personnel, equipment and goods, while following the principle of due diligence.

338. Germany reiterated its support for the draft article, given that the sufficient protection of deployed personnel, their equipment and goods was crucial to allow for States and other actors to provide humanitarian assistance efficiently.

339. Switzerland noted that, whereas draft article 18 considered the obligation to protect relief personnel, equipment and goods as an obligation of means, under international humanitarian law it was an obligation of result.

340. Whereas IFRC acknowledged the significance of the obligation of affected States to take appropriate measures to ensure the protection of relief personnel in their territory, it observed that the draft article did not recognize any corresponding rights and obligations of actors providing external assistance. In its view, the provision could benefit from additional text to confirm the duties of external actors to consult and cooperate with the affected State on matters of protection and security.

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[731] A/C.6/69/SR.20, para. 107.

[732] A/C.6/69/SR.21, para. 50.

[733] A/C.6/69/SR.19, para. 129.

[734] A/C.6/69/SR.21, para. 74.

341. The Office for the Coordination of Humanitarian Affairs welcomed the inclusion of the draft article. It observed that sufficient protection of relief personnel, equipment and goods was an essential condition in order for any relief operation to be carried out effectively.

342. The World Bank pointed to the possibility that the affected State might not be able to provide protection for relief personnel, equipment and goods and raised the question of whether, in such circumstances, its obligation would extend to permitting the entry into its territory of security personnel engaged to provide the necessary protection.

343. WFP welcomed the inclusion in draft article 18 of the provision on the duty to protect relief personnel, equipment and goods, given that it could provide significant protection in addition to that which was set out in the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol.[735]

3. Recommendation of the Special Rapporteur

344. The Special Rapporteur recalls that no reference to "disaster risk reduction" is retained in his proposed reformulation of the definitions contained in subparagraphs (d), (e) and (f) of draft article 4. In addition, he sees no advantage to inserting the suggested phrase "subject to the available resources and capabilities" in this draft article, which is concerned with the protection of relief personnel, equipment and goods, given that such a provision so would refer to the situation that triggers the fulfilment of the duty to seek assistance. Such a situation is characterized in draft article 13 [10], which is concerned with a disaster that exceeds the affected States' national response capacity, informs the whole of the draft and therefore warrants no repetition in other individual draft articles.

345. The Special Rapporteur recommends that draft article 18, as adopted on first reading, be referred unchanged to the Drafting Committee.

T. Draft article 19 [15]: Termination of external assistance

> The affected State and the assisting State, and as appropriate other assisting actors, shall consult with respect to the termination of external assistance and the modalities of termination. The affected State, the assisting State, or other assisting actor wishing to terminate shall provide appropriate notification.

1. Comments and observations made prior to the adoption of the first reading draft

346. Draft article 19 [15] was discussed in the Sixth Committee at the sixty-seventh, sixty-eighth and sixty-ninth sessions of the General Assembly.

347. The Nordic States welcomed draft article 19 [15] on the termination of assistance.[736] Pakistan underlined the primary role of the affected State in the decision to terminate external assistance.[737] According to India, the termination of

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[735] United Nations, *Treaty Series*, vol. 2051, p. 363, and Optional Protocol of 8 December 2005, General Assembly resolution 60/42, annex.

[736] A/C.6/67/SR.18, para. 54.

[737] A/C.6/67/SR.20, para. 33.

relief operations had to be ultimately a matter for decision by the affected State.[738] Thailand suggested that a certain degree of discretion should be allowed for affected States to consider terminating external assistance, especially for reasons of national security or public interest. In a similar vein, affected States should be able to terminate assistance that had become irrelevant or had deviated from the original offer.[739] The Russian Federation[740] suggested that draft article 19 [15] could include the clarification made in the commentary that "when an affected State accepts an offer of assistance, it retains control over the duration for which that assistance will be provided".

348. Chile supported the inclusion of a precise reference to the right of the affected State to terminate assistance "at any time".[741] Israel suggested that reference to a right to terminate assistance "at any time" should be extended to decisions adopted by the assisting States or the affected State.[742] The United Kingdom reaffirmed its view that the assisting State retained the right to withdraw and that it could not be conditioned upon consultation.[743] El Salvador found the wording insufficiently precise, inasmuch as the central idea, as found in other international treaties, should be that the State providing assistance could cease doing so, upon prior notification, at any time it deemed appropriate.[744]

349. The inclusion of procedural aspects in draft article 19 [15], such as notification of termination and consultation, was supported by Chile,[745] Portugal[746] and Malaysia.[747] Pakistan affirmed that consultation among the affected State, the assisting State and other assisting recognized humanitarian actors before the termination of external assistance would add legal certainty.[748] Austria indicated that it would be helpful to provide for consultations as soon as possible.[749] IFRC welcomed the provision, given that it addressed an operational problem, namely, that international response activities were often terminated too abruptly, and noted that a premature decision to terminate assistance could be a setback to recovery.[750] Conversely, the Russian Federation considered the language of draft article 19 [15] to be unusual, because it implied that consultations between the affected State and assisting entities were to be treated as being a legal obligation.[751]

350. The European Union,[752] Ireland,[753] Portugal,[754] Romania[755] and Slovenia[756] maintained that, in the consultations with the affected State on the termination of

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[738] A/C.6/67/SR.20, para. 20.
[739] A/C.6/67/SR.19, para. 41.
[740] A/C.6/68/SR.25, para. 40.
[741] A/C.6/67/SR.19, para 14.
[742] A/C.6/67/SR.20, para. 38.
[743] A/C.6/67/SR.19, para. 66.
[744] A/C.6/67/SR.19, para. 49.
[745] A/C.6/67/SR.19, para. 14.
[746] A/C.6/67/SR.19, para. 62.
[747] A/C.6/67/SR.19, para. 113.
[748] A/C.6/67/SR.20, para. 33.
[749] A/C.6/67/SR.18, para. 87.
[750] A/C.6/67/SR.20, para. 64.
[751] Statement of 2 November 2012, 19th meeting, sixty-seventh session of the General Assembly.
[752] A/C.6/67/SR.18, para. 72.
[753] A/C.6/68/SR.25, para. 118.
[754] A/C.6/67/SR.19, para. 62.
[755] A/C.6/68/SR.24, para. 82.
[756] A/C.6/67/SR.18, para. 128.

assistance, the needs of the affected persons had to also be adequately taken into account so that the termination of external assistance did not adversely impact persons affected by a disaster. Slovenia emphasized that the principle of the affected State not arbitrarily withholding consent, contained in draft article 14 [11], also applied when considering the termination of assistance.[757] Mexico suggested that procedures for the termination of assistance should be provided for by the affected State under its laws through mechanisms that were consistent with international law on the matter.[758]

351. Singapore[759] and Slovenia wondered what consequences would arise if the consultations between the parties concerned were unsuccessful. In such cases, according to Slovenia, the primary role of the affected State to direct, control, coordinate and supervise relief and assistance had to be respected, even if the termination of external assistance should not endanger the needs of disaster victims.[760]

352. The Nordic States indicated that further elaboration of the draft article might be needed, including the possibility of expressly referring to the repatriation of goods and personnel.[761]

2. Comments and observations received in response to the request of the International Law Commission

353. Australia expressed the concern that the provisions appeared to introduce limits on the prerogative of the affected State to freely withdraw its consent to the presence of external actors providing assistance in its territory.

354. Finland, on behalf of the Nordic States, reiterated the suggestion that further revision and elaboration of draft article 19 [15] should be undertaken. In its view, the term "termination" did not properly represent or reflect what was understood as quality and accountability with regard to humanitarian response. Furthermore, whereas the draft article addressed the legal implications of the termination of external assistance, it should not overlook the importance of early recovery measures and the linkages and transition between humanitarian and development assistance. The Nordic States recommended including a clause allowing for the assisting State, and as appropriate other assisting actors, to repatriate their goods and personnel upon the end of their humanitarian assistance mission in possible transition to development assistance.

355. IFRC reiterated its satisfaction with the attention devoted to promoting an orderly approach to the termination of aid.

3. Recommendation of the Special Rapporteur

356. The Special Rapporteur considers that further precision could be attained in the text of draft article 19 [15] by inserting an express reference to the right of the actors concerned to terminate external assistance at any time. He sees no need to make specific reference in the text to the repatriation of equipment and goods,

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[757] Ibid.

[758] A/C.6/67/SR.19, para. 19.

[759] A/C.6/68/SR.25, para. 110.

[760] A/C.6/67/SR.18, para. 128.

[761] A/C.6/67/SR.18, para. 54.

however, given that this option is already envisaged in paragraph 1 (b) of draft article 17 [14] by the use of the expression "disposal thereof".

357. The Special Rapporteur recommends that the first reading text of draft article 19, as amended, be referred to the Drafting Committee to read as follows:

> **Draft article 19**
> **Termination of external assistance**
>
> The affected State and the assisting State, and as appropriate other assisting actors, shall, in the exercise of their right to terminate external assistance at any time, consult with respect to such termination and its modalities. The affected State, the assisting State or other assisting actor wishing to terminate shall provide appropriate notification.

U. Draft article 20: Relationship to special or other rules of international law

> The present draft articles are without prejudice to special or other rules of international law applicable in the event of disasters.

1. Comments and observations made prior to the adoption of the first reading draft

358. Draft article 20 was discussed in the Sixth Committee at the sixty-ninth session of the General Assembly.

359. The inclusion of draft article 20 in its present form was supported by the Netherlands,[762] Malaysia,[763] Chile,[764] the European Union[765] and Spain.[766]

360. Thailand requested clarification regarding the application of the draft articles and other rules of international law in the event of disasters and asked whether examples of the latter could be included in the commentary.[767] Greece expressed a preference for a "notwithstanding" clause instead of the current "without prejudice" formulation. In its view, it would better convey the understanding that the draft articles remain applicable, alongside more specific treaties dealing with disaster response and prevention, to fill possible legal gaps.[768]

361. The observer delegation of IFRC, although not opposed to the formulation of draft article 20, lamented the lack of reference to regional agreements, which formed an important part of disaster law.[769]

362. Whereas the Islamic Republic of Iran considered that the inclusion of a provision concerning the relationship between the draft articles and the Charter of the United Nations would be useful, given that it would highlight the cardinal role

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[762] A/C.6/69/SR.20, para. 12.
[763] A/C.6/69/SR.21, para. 51.
[764] A/C.6/69/SR.24, para. 46.
[765] A/C.6/69/SR.19, para. 72.
[766] A/C.6/69/SR.21, para. 40.
[767] A/C.6/69/SR.20, para. 70.
[768] A/C.6/69/SR.21, para. 17.
[769] Statement of 29 October 2014, 21st meeting, sixty-ninth session of the General Assembly.

of the principles of the sovereignty and territorial integrity of the affected State enshrined in the Charter.[770] Ireland considered such a provision to be unnecessary.[771]

2. Comments and observations received in response to the request of the International Law Commission

363. IFRC was of the view that draft article 20 should explicitly refer to regional and bilateral arrangements in its text and not merely in the commentary thereto.

3. Recommendation of the Special Rapporteur

364. The Special Rapporteur finds it useful, as suggested, to include in the text of draft article 20 an express reference to regional and bilateral treaties. He therefore recommends that, with that amendment, the first reading text of draft article 20 be referred to the Drafting Committee, to read as follows:

Draft article 20
Relationship to special or other rules of international law

The present draft articles are without prejudice to regional and bilateral treaties and special or other rules of international law otherwise applicable in the event of disasters.

V. Draft article 21 [4]: Relationship to international humanitarian law

The present draft articles do not apply to situations to which the rules of international humanitarian law are applicable.

1. Comments and observations made prior to the adoption of the first reading draft

365. Draft article 21 [4] was discussed in the Sixth Committee at the sixty-fourth, sixty-fifth and sixty-ninth sessions of the General Assembly.

366. Austria,[772] the Nordic States,[773] the Russian Federation,[774] Spain,[775] Thailand,[776] Greece,[777] Israel,[778] Cuba,[779] Poland,[780] Sri Lanka,[781] the Netherlands,[782] the United States,[783] Colombia,[784] Mongolia[785] and India[786] supported the exclusion of situations of armed conflict from the scope of application of the topic.

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[770] A/C.6/69/SR.21, para. 27.
[771] Statement of 27 October 2014, 19th meeting, sixty-ninth session of the General Assembly.
[772] A/C.6/64/SR.20, para. 13.
[773] A/C.6/64/SR.20, para. 8.
[774] A/C.6/64/SR.20, para. 47.
[775] A/C.6/64/SR.20, para. 48.
[776] A/C.6/64/SR.21, para. 15.
[777] A/C.6/64/SR.21, para. 46.
[778] A/C.6/64/SR.23, para. 40.
[779] A/C.6/65/SR.23, para. 94.
[780] A/C.6/64/SR.21, para. 73.
[781] A/C.6/64/SR.21, para. 53.
[782] A/C.6/64/SR.21, para. 91.
[783] A/C.6/64/SR.21, para. 102.
[784] A/C.6/65/SR.20, para. 74.
[785] A/C.6/69/SR.24, para. 96.
[786] A/C.6/65/SR.25, para. 34.

367. Some States maintained that, although armed conflicts should be excluded from the definition of disasters, the draft articles could also apply should a disaster take place during a time of an armed conflict. Greece favoured an approach according to which the draft articles and international humanitarian law would apply in parallel, where appropriate, even if the latter body of law took precedence in times of armed conflict.[787] France was of the view that the mere existence of an armed conflict did not necessarily preclude application of the draft articles, even though, under the relevant *lex specialis*, the protection of persons during armed conflicts would be governed first and foremost by the applicable rules of international humanitarian law.[788] Chile, recognizing that international humanitarian law should prevail over other rules, maintained that the Geneva Conventions of 1949 and the Additional Protocols thereto, did not cover some aspects of disaster response that could occur during or as a result of armed conflict, in particular in the post-disaster phase.[789] El Salvador indicated that the draft articles should be construed as permitting their application in situations of armed conflict, to the extent that existing rules of international humanitarian law did not apply.[790]

368. Support for a "without prejudice" clause, to emphasize that the draft articles were without prejudice to the preferential application of the rules pertaining to international humanitarian law in cases of armed conflict, was expressed by the Netherlands,[791] Ghana,[792] Chile,[793] Ireland,[794] Romania,[795] Spain[796] and Slovenia.[797] Reference to international humanitarian law as the *lex specialis* applicable in situations of armed conflict was reiterated by the Nordic States[798] and Israel.[799]

369. Austria interpreted draft article 21 [4] to mean that the draft articles did not apply to disasters connected with international and non-international armed conflicts, whereas disasters connected with internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, would be covered.[800]

370. Austria recommended aligning the text of the draft article with its commentary in order to clarify that the draft articles should apply also to situations of armed conflict, but only insofar as they did not contradict the applicable rules of international humanitarian law.[801] Mongolia also noted the incongruity between the text of the draft article and that of its commentary with regard to the application of the draft articles to disasters connected with armed conflicts.[802] IFRC welcomed the evolution of draft article 21 [4], which, in its view, appropriately avoided the

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[787] A/C.6/69/SR.21, para. 18.
[788] A/C.6/64/SR.21, para. 23.
[789] A/C.6/64/SR.20, para. 29.
[790] A/C.6/65/SR.23, para. 64.
[791] A/C.6/64/SR.21, para. 91.
[792] A/C.6/64/SR.22, para. 12.
[793] A/C.6/64/SR.20, para. 29.
[794] A/C.6/64/SR.22, para. 18.
[795] A/C.6/64/SR.22, para. 24.
[796] A/C.6/69/SR.21, para. 41.
[797] A/C.6/64/SR.21, para. 70.
[798] A/C.6/64/SR.20, para. 8.
[799] A/C.6/64/SR.23, para. 40.
[800] A/C.6/69/SR.19, para. 123.
[801] Ibid.
[802] A/C.6/69/SR.24, para. 96.

potential for contradiction by excluding from the scope of the draft articles situations to which international humanitarian law applied. IFRC expressed its concern, however, about the final sentence of paragraph 3 of the commentary and paragraph 7 of the commentary to draft article 8 [5], which together seemed to introduce confusion and could lead to misapprehensions about the scope of international humanitarian law.[803]

371. The possibility of benefiting from specific examples of different scenarios in which the draft articles would apply together with the rules of international humanitarian law was suggested by Malaysia.[804] Slovenia suggested exploring the potential relationship of the draft articles with the rules addressing internally displaced persons and refugees.[805]

2. Comments and observations received in response to the request of the International Law Commission

372. Austria drew attention, once again, to the inconsistency between the formulation of the draft article and the corresponding commentary, which, in its view, did not allow for a clear understanding of what the Commission envisaged. In Austria's view, the draft articles should apply also to situations of armed conflict, but only insofar as they do not contradict the applicable rules of international humanitarian law.

373. The Czech Republic concurred with the position taken in the commentary, which foresaw the applicability of the draft articles in complex emergency situations, including those of armed conflict, to the extent that international humanitarian law did not apply. It also pointed to the discrepancy between the text of the draft article and the commentary. It called upon the Commission to align the text of the draft article with the commentary; a further analysis of the relationship between the draft articles and rules of armed conflict would be desirable.

374. The Netherlands reiterated its preference to have the draft article recast with a standard "without prejudice" clause.

375. Switzerland noted that the exclusion of armed conflicts had been removed, thus giving rise to the question of how the draft articles covered situations of armed conflict in which disasters occur. It recalled the various references to the applicability of the draft articles in "complex emergencies" in the commentaries to draft articles 8 [5], 20 and 21 [4] and expressed the view that, together, those commentaries introduced more ambiguity than clarity on the relationship between the draft articles and international humanitarian law. In its view, the exclusion of situations covered by international humanitarian law had the advantage of clarity.

376. The European Union noted that the content of the draft article did not seem to match with the commentary thereto. Notwithstanding such inconsistency, "complex emergencies" gave rise to the question of how best to address persons in need in such situations. It proposed presenting the relationship between the draft articles and international humanitarian law in the form of a "without prejudice" clause in order to ensure the applicability of the draft articles in situations of complex

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[803] A/C.6/65/SR.25, para. 49.

[804] A/C.6/64/SR.21, para. 38.

[805] A/C.6/64/SR.21, para. 70.

emergencies and clarifying in the commentary that nothing in the draft articles could be read or interpreted as affecting international humanitarian law.

377. ICRC pointed to the discrepancy between the rule contained in draft article 21 [4] and its commentary. It recommended aligning the commentary with the text of the draft article to indicate that the draft articles would not apply in situations of armed conflict, including in "complex emergencies" as defined by the Commission's commentary. ICRC took issue with the assumption, expressed in the commentary, of the possibility of gaps existing in international humanitarian law and of the potential inapplicability of certain rules of international humanitarian law. In its view, international humanitarian law applied in situations where armed conflict overlapped with a natural disaster, and there was a set of sufficiently detailed provisions to deal with the protection and assistance issues arising from "complex emergencies". As such, it was crucial that the draft articles and their commentaries did not contradict the rules of international humanitarian law. The only way of doing so would be to ensure that the draft articles and their commentaries unambiguously excluded situations of armed conflict from the scope of application of the draft articles.

378. IFRC was of the view that the draft articles should not apply in situations of armed conflict, given that the particular dynamics of conflict had not been adequately considered in their design. No guidance was provided as to when international humanitarian law would or would not apply, and indeed none could be expected, given that the draft articles would not be the appropriate instrument to fundamentally define the scope of the Geneva Conventions of 1949, and this invited confusion and contradiction without adding real value in operations.

379. The Office for the Coordination of Humanitarian Affairs expressed the concern that the draft article appeared to be inconsistent with the commentary and, accordingly, did not provide a clear understanding of the relationship between the draft articles and international humanitarian law. The Office considered that the draft articles should apply to so-called "complex disasters" that occur in the same territory in which an armed conflict is taking place, without prejudice to the parallel application of international humanitarian law and when the rules of international humanitarian law did not address the specific disaster-related issue.

3. Recommendation of the Special Rapporteur

380. The Special Rapporteur points out that the draft articles on the protection of persons in the event of disasters are not intended to constitute a restatement of international humanitarian law, something which, in any event, they could not be. On the contrary, the integrity of that body of law is carefully preserved throughout the present draft, in particular by means of the specific provision embodied in draft article 21 [4], even though it might have been adequately protected by draft article 20.

381. As explained in paragraph 4 above, questions regarding the drafting of the commentary to the draft articles would be addressed once a provisional final text of the draft articles has been adopted. The Special Rapporteur is of the view that a "without prejudice" clause would better convey the intended meaning of draft article 21 [4]. He therefore recommends that the following text for draft article 21 be referred to the Drafting Committee:

Draft article 21 [4]
Relationship to international humanitarian law

The present draft articles are without prejudice to the rules of international humanitarian law applicable in the event of disasters.

III. Draft preamble

A. Introduction

382. In the course of the first reading by the Commission, in 2014, of its draft articles on the protection of persons in the event of disasters, the suggestion was made that the draft needed to be supplemented by a preamble, to be prepared and considered during the second reading in 2016. Responding to that suggestion, the Special Rapporteur has deemed it appropriate to include in the present report his recommendation for the text of the corresponding preamble.

383. In the past, the Commission has submitted to the General Assembly final draft articles on various topics, containing a preamble. This has been the case for texts recommended to form the basis of a convention[806] or to be transformed later into a binding text,[807] as well as for instruments stating principles[808] in a specific area of international law.

384. The following draft preamble, recommended by the Special Rapporteur, aims at providing a conceptual framework for the draft articles, setting out the general context in which the topic of the protection of persons in the event of disasters has been elaborated and furnishing the essential rationale for the draft articles.

Recommendation of the Special Rapporteur

385. The following text of a draft preamble is proposed for the consideration of the Commission:

Draft preamble

Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering the increasing frequency and severity of natural and human-made disasters and their subsequent short-term and long-term damaging impact,

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[806] Draft convention on the Elimination of Future Statelessness and Draft convention on the Reduction of Future Statelessness, *Yearbook…1954*, vol. II, p.140; Draft convention on Nationality of Natural Persons in relation to the Succession of States, *Yearbook…1999*, vol. II (Part Two), para. 47.

[807] Draft articles on the Law of Transboundary Aquifers, with commentaries, *Yearbook…2008*, vol. II (Part Two), para. 53.

[808] Draft articles on Prevention of Transboundary Harm from Hazardous Activities, *Yearbook…2001*, vol. II (Part Two), para. 99; Draft Principles on the Allocation of Loss in the case of Transboundary Harm arising out of Hazardous Activities, *Yearbook…2006*, vol. II (Part Two), para. 66.

Deeply concerned about the suffering of the persons affected by disasters and conscious of the need to respect and protect their dignity and rights in such circumstances,

Mindful of the importance of strengthening international cooperation in relation to all phases of a disaster,

Stressing the fundamental principle of the sovereign equality of States and its corollary, the duty not to intervene in matters within the domestic jurisdiction of any State and, consequently, *reaffirming* the primary role of the affected State in the taking of action related to the provision of disaster relief and assistance,

The .... agree as follows:

B. First paragraph

Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

386. This paragraph restates wording similar to that used by the Commission in recent final drafts containing a preamble.[809] It focuses on the mandate given to the General Assembly to codify and progressively develop international law and, implicitly, on the consequential related role attributed to the Commission.

C. Second paragraph

Considering the increasing frequency and severity of natural and human-made disasters and their subsequent short-term and long-term damaging impact,

387. This paragraph highlights the phenomenon of disasters, which has raised the concern of the international community, leading to the development by the Commission of legal rules in that area. The reference is to the verifiable constant trend according to which both natural and human-made disasters are increasing in frequency and severity, in terms of widespread loss of life, great human suffering and distress, as well as displacement or large-scale material or environmental damage, as stated in draft article 3 [3] on the definition of "disaster". Such a reference is commonly included in preambles found in disaster law instruments.[810]

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[809] See draft articles on prevention of transboundary harm from hazardous activities, *Yearbook...2001*, vol. II (Part Two), para. 97; and draft articles on the law of transboundary aquifers, *Yearbook...2008*, vol. II (Part Two), para. 53.

[810] See ASEAN Agreement ("Concerned by the increasing frequency and scale of disasters in the ASEAN region and their damaging impacts both short-term and long-term"); Decision No 1313/2013/EU of the European Parliament and of the Council, of 17 December 2013, on a Union Civil Protection Mechanism (hereinafter "European Union Decision on the Union Mechanism") ("In view of the significant increase in the numbers and severity of natural and man-made disasters in recent years and in a situation where future disasters will be more extreme and more complex with far-reaching and longer-term consequences as a result, in particular, of climate

388. Express mention is made to "natural and human-made disasters" to emphasize a distinctive characteristic of the present draft compared with some other instruments in the area, which have a more restricted scope of application by being limited to natural disasters. On the contrary, draft article 3 [3] and its commentary underline the absence of limitations relating to the origin of the event, whether natural or human-made. As has been demonstrated by experience, disasters often arise from complex sets of causes, and therefore an express reference to the all-encompassing definition of disaster adopted by the Commission is pertinent in order to bring forward the choice it has made. The present report does explain that the term "disasters" included in the draft preamble covers both sudden and slow-onset and small and large-scale disasters.

389. The reference to "short-term and long-term" impact, which appears in the preambles to some instruments in this area, such as the ASEAN Agreement on Disaster Management and Emergency Response and the South Asian Association for Regional Cooperation Agreement on Rapid Response to Natural Disasters, is intended to show that the focus of the present draft is not just on the immediate effects of a disaster. It also implies a far-reaching approach, addressing activities devoted to the recovery phase, as clearly stated in the commentary to draft article 1 [1], as adopted on first reading, concerning the scope *ratione temporis*.

D. Third paragraph

> *Deeply concerned* about the suffering of the persons affected by disasters and conscious of the need to respect and protect their dignity and rights in such circumstances,

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change and the potential interaction between several natural and technological hazards, an integrated approach to disaster management is increasingly important … The protection to be ensured under the Union Civil Protection Mechanism ('the Union Mechanism') should cover primarily people, but also the environment and property, including cultural heritage, against all kinds of natural and man-made disasters, including environmental disasters, marine pollution and acute health emergencies, occurring inside or outside the Union"); Inter-American Convention to Facilitate Disaster Assistance, of 7 June 1991 (hereinafter the "Inter-American Convention") ("Considering the frequency of disasters, catastrophes, and calamities that take and threaten the lives, safety, and property of the inhabitants of the American hemisphere"); South Asian Association for Regional Cooperation, Agreement on Rapid Response to Natural Disasters, 11 November 2011 (hereinafter the "SAARC Agreement") ("Concerned at the increasing frequency and scale of natural disasters in the South Asian region and their damaging impacts both short-term and long-term"); Framework Convention on Civil Defence Assistance, of 22 May 2000, United Nations, *Treaty Series*, vol. 2172, p. 213 ("Deeply concerned over the increase both in the number and the seriousness of disasters of all kinds throughout the world, whether from natural causes or man-made"); Tampere Convention ("Recognizing that the magnitude, complexity, frequency and impact of disasters are increasing at a dramatic rate, with particularly severe consequences in developing countries"); Memorandum of Understanding between the Argentine Republic and the Republic of Cuba in the field of Humanitarian Assistance and Disaster Reduction, 19 January 2009, United Nations, *Treaty Series*, vol. 2774, No. 48843 ("Considering the increase in the occurrence and seriousness of disasters, both natural disasters and those caused by human interaction with the environment"); and Thirty-first International Conference of the Red Cross and Red Crescent, 28 November to 1 December 2011, resolution 7 on Strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery ("*Concerned* about the growing impacts of natural disasters on the lives, livelihoods and well-being of people around the world, and in particular the poorest and most vulnerable communities").

390. The third and fourth preambular paragraphs address the main objectives of the present draft articles, namely, the protection of persons affected by a disaster and the activities to be carried out by various actors to facilitate an adequate and effective response to disasters.

391. The third preambular paragraph emphasizes the paramount goal of the draft articles, namely, the protection of persons whose lives, well-being and property have been affected by disasters. This has been recognized in draft article 1 [1] on the scope of the draft articles and in other substantive provisions, such as draft articles 5 [7], 6 [8] and 7 [6], as adopted on first reading. As a result, the third preambular paragraph utilizes the term "suffering", which also appears in other disaster law instruments,[811] given that it encompasses various forms of prejudice, whether moral or material, to which persons affected by a disaster are subjected.

392. The final phrase, concerning "the need to respect and protect their dignity and rights in such circumstances", makes reference to another basic tenet of the draft, as reflected in draft articles 2 [2], 5 [7] and 6 [8], as adopted on first reading.

E. Fourth paragraph

> *Mindful* of the importance of strengthening international cooperation in relation to all phases of a disaster,

393. The fourth preambular paragraph accords particular relevance to the promotion of international cooperation in the event of a disaster by means of the present draft articles, as contained in other preambles adopted by the Commission in areas where cooperation also plays a significant role.[812]

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[811] See European Union Decision on the Union Mechanism ("The protection to be ensured under the Union Civil Protection Mechanism … should cover primarily people, but also the environment and property, including cultural heritage, against all kinds of natural and man-made disasters, including environmental disasters, marine pollution and acute health emergencies, occurring inside or outside the Union"); the Inter-American Convention ("Convinced that the human suffering caused by such disasters can be relieved more effectively and swiftly by means of an instrument to facilitate such assistance and to regulate international procedures for providing it in such cases); General Assembly resolution 45/100 of 14 December 1990 ("Considering that the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity"); General Assembly resolution 46/182 of 19 December 1991 ("Deeply concerned about the suffering of the victims of disasters and emergency situations, the loss in human lives, the flow of refugees, the mass displacement of people and the material destruction"); and Thirtieth International Conference of the Red Cross and Red Crescent, 26 to 30 November 2007, resolution 4 on Adoption of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance ("Reaffirming that the fundamental concern of mankind and of the international community in disaster situations is the protection and welfare of the individual and the safeguarding of basic human rights, as stated in the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, adopted by the 21st International Conference of the Red Cross in 1969").

[812] See draft articles on prevention of transboundary harm from hazardous activities, *Yearbook…2001*, vol. II (Part Two), para. 97 ("*Recognizing* the importance of promoting international cooperation"); and draft articles on the law of transboundary aquifers, *Yearbook…2008*, vol. II (Part Two), para. 53 ("*Recognizing* the necessity to promote international cooperation").

394. Cooperation, being the practical realization of the principle of solidarity, is also one of the main tenets of the current draft articles. It is closely linked with several aspects of the relationship between the affected State and assisting States or other assisting actors, as addressed in particular in draft articles 8 [5] to 19 [15], as adopted on first reading.

395. Similarly, the preambles of several disaster law instruments emphasize the positive role played by cooperation among relevant stakeholders in preventing and reducing the risk of disasters.[813] Reference is implicitly made to closely linked substantive provisions of the draft articles to underline the multifaceted nature of the actors involved in cooperative action, namely, States, intergovernmental and non-governmental organizations and private actors, and the role of cooperation in

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[813] See ASEAN Agreement ("Reaffirming also …the Declaration of ASEAN Concord II of 7 October 2003 where ASEAN shall, through the ASEAN Socio-Cultural Community, intensify co-operation in addressing problems associated with, inter alia, disaster management in the region to enable individual members to fully realize their development potentials to enhance the mutual ASEAN spirit…Recalling also the Hyogo Declaration and the Hyogo Framework for Action set out by the World Conference on Disaster Reduction in January 2005, which, among others, stress the need to strengthen and when necessary develop co-ordinated regional approaches, and create or upgrade regional policies, operational mechanisms, plans and communication systems to prepare for and ensure rapid and effective disaster response in situations that exceed national coping capacities"); European Union Decision on the Union Mechanism ("Prevention is of key importance for protection against disasters and requires further action as called for in the Council Conclusions of 30 November 2009 and in the European Parliament Resolution of 21 September 2010 on the Commission's Communication entitled a 'Community approach on the prevention of natural and man-made disasters'. The Union Mechanism should include a general policy framework for Union actions on disaster risk prevention"); Inter-American Convention ("Mindful of the selfless spirit of cooperation that prompts the states of this region to respond to events of this kind, which are inimical to the peoples of the American hemisphere"); Tampere Convention ("Noting the history of international cooperation and coordination in disaster mitigation and relief … Further desiring to facilitate international cooperation to mitigate the impact of disasters"); General Assembly resolution 46/182 of 19 December 1991 ("Mindful of the need to strengthen further and make more effective the collective efforts of the international community, in particular the United Nations system, in providing humanitarian assistance"); Thirtieth International Conference of the Red Cross and Red Crescent, 26 to 30 November 2007, resolution 4 on Adoption of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance ("Reaffirming the sovereign right of affected States to seek, accept, coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors in their territory"); General Assembly resolution 67/231 of 21 December 2012 ("Emphasizing also that the affected State has the primary responsibility in the initiation, organization, coordination and implementation of humanitarian assistance within its territory and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters … Reaffirming the importance of international cooperation in support of the efforts of the affected States in dealing with natural disasters in all their phases, in particular in preparedness, response and the early recovery phase, and of strengthening the response capacity of countries affected by disaster"); and General Assembly resolution 68/102 of 13 December 2013 ("Expressing its deep concern about the increasing challenges faced by Member States and the United Nations humanitarian response system and their capacities as a result of the consequences of natural disasters, including those related to the continuing impact of climate change, and reaffirming the importance of implementing the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, inter alia, by providing adequate resources for disaster risk reduction, including investment in disaster preparedness and capacity-building, and by working towards building back better in all phases from relief to development").

the fulfilment of the basic principles of humanity, no-harm, independence, neutrality, impartiality and non-discrimination.

396. The mention of "all phases of a disaster" recognizes the reach of the draft articles into each and every component phase of the entire disaster cycle, as appropriate. It thus removes the need for a specific reference in the preamble to the various phases, characterizing them as prevention and preparedness and relief and recovery, as is sometimes done in comparable texts. To follow the latter path would presuppose having provided a legal or factual definition of such terms in the draft, which was not done, considering the lack of a common terminology even among humanitarian actors.

F. Fifth paragraph

> *Stressing* the fundamental principle of the sovereign equality of States and its corollary, the duty not to intervene in matters within the domestic jurisdiction of any State and, consequently, reaffirming the primary role of the affected State in the taking of action related to the provision of disaster relief and assistance,

397. Recalling the fundamental principles of sovereign equality and non-intervention and the "primary role of the affected State" in the taking of action related to the provision of disaster relief and assistance underpins the reference previously made to international cooperation. In fact, cooperation should not be interpreted as diminishing the sovereignty of affected States and their prerogatives within the limits of international law. The deliberate mention of the role of State authorities is thus in line with draft article 12 [9], which singles out their primary responsibility in the direction, control, coordination and supervision relating to the provision of disaster relief and assistance.[814]

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[814] See also General Assembly resolution 45/100 of 14 December 1990 ("Reaffirming the sovereignty, territorial integrity and national unity of States, and recognizing that it is up to each State first and foremost to take care of the victims of natural disasters and similar emergency situations occurring on its territory"); General Assembly resolution 67/231 of 21 December 2012 ("Emphasizing also that the affected State has the primary responsibility in the initiation, organization, coordination and implementation of humanitarian assistance within its territory and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters … Reaffirming the importance of international cooperation in support of the efforts of the affected States in dealing with natural disasters in all their phases, in particular in preparedness, response and the early recovery phase, and of strengthening the response capacity of countries affected by disaster"); General Assembly resolution 70/107 of 10 December 2015 ("Emphasizing also that the affected State has the primary responsibility in the initiation, organization, coordination and implementation of humanitarian assistance within its territory and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters"); and Thirtieth International Conference of the Red Cross and Red Crescent, 26 to 30 November 2007, resolution 4 on Adoption of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance ("*Reaffirming* the sovereign right of affected states to seek, accept, coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors in their territory").

G. Sixth paragraph

The … agree as follows:

398. Given that the Special Rapporteur proposes below that the Commission recommend that its final draft articles form the basis of a treaty, an additional preambular paragraph to that effect is needed. Pending the adoption by the Commission of its recommendation, however, the Special Rapporteur refrains from providing herewith a suggested precise text for such a paragraph. Its eventual wording would have to emphasize the binding nature of the proposed instrument, according to formulas commonly included in the final section of comparable preambles. Reference might be limited to "States" as potential parties to the future instrument or extend its scope of application beyond States, in view of the fact that, under the relevant provisions of the draft, it could also be ratified by international organizations.

H. Other possible paragraphs

399. As presently conceived, the draft preamble avoids making specific reference to, or endorsement of, relevant documents emphasizing action requested from States, such as the recently adopted Sendai Framework or, in other respects, the seminal General Assembly resolution 46/182. Given that the preamble is intended to be an integral part of a future binding text, it would stand to reason that a prudent approach should be taken to avoid the risk of crystallizing in it documents that are to be subsequently modified by international practice, for example the shift from the Hyogo Framework to the Sendai Framework in the short span of 10 years. Nonetheless, some such documents have already been mentioned in the present report and will also be referred to, as appropriate, in the corresponding commentaries to the relevant draft articles when finally adopted.

400. That solution should be carefully weighed, however, a possible alternative would be to mention the relevant international documents in order to reaffirm and endorse the basic principles of disaster law already expressed therein. Such a solution was chosen for some of the preambles adopted by the Commission on other final drafts, such as the preamble to the draft articles on transboundary aquifers, in which reference is made to the Rio Declaration on Environment and Development and General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources. Seen from this perspective, additional preambular paragraphs could be drafted in terms of "*Recalling…*" or "*Reaffirming…*" the principles adopted by relevant documents in this area.

IV. Final form of the draft articles

1. Comments and observations made prior to the adoption of the first reading draft

401. The question of the final form to be given to the draft articles was raised during the debate in the Sixth Committee at various sessions of the General Assembly. The United Kingdom,[815] the Czech Republic,[816] India,[817] the Russian

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[815] A/C.6/64/SR.29, para. 40; A/C.6/65/SR.24, para. 64; A/C.6/66/SR.23, para. 45; and A/C.6/69/SR.19, para. 166.

[816] A/C.6/64/SR.20, para. 43.

[817] A/C.6/69/SR.21, para. 70.

Federation[818] and Spain[819] expressed a preference for their adoption in the form of non-binding guidelines. The development of non-binding guidelines or a framework of principles for States and others engaged in disaster relief was considered more likely to be of practical value.[820] The Russian Federation also proposed adoption in the form of a guide to practice,[821] and Germany suggested a set of recommendations.[822] Whereas Mexico indicated that it was open to the possibility of developing a convention, it nonetheless considered it would be more useful if the draft articles were presented in the form of guiding principles.[823]

402. Poland saw merit in the adoption of a framework convention, setting out general principles, which could form a point of reference for the further elaboration of special bilateral or regional agreements.[824] IFRC was of the view that strengthening the global legal framework by the adoption of an international convention would add a new element with the potential to further stimulate and enhance the work that had been accomplished through non-binding instruments.[825]

2. Comments and observations received in response to the request of the International Law Commission

403. Australia considered the existing body of international law sufficient for providing the legal underpinnings of disaster risk reduction and response efforts. Accordingly, it considered that the Commission's work would be most valuable in cases where it assisted States in understanding and implementing their existing obligations. Praising the Commission for its extensive work in taking into consideration existing treaty obligations, those elements which sought to develop or create new duties or obligations seemed, for the time being, to be more appropriately pursued as best practice principles or guidelines.

404. The Netherlands indicated that, whereas the draft articles could be seen as an authoritative reflection of contemporary international law or an attempt to progressively develop the law, they were not themselves legally binding.

405. The European Union reiterated that the draft articles were already an important contribution, regardless of the form they may take, in support of persons in the event of disasters.

406. IFRC maintained that there was little point in issuing the draft articles as non-binding guidelines, which would risk significant confusion and overlap with existing "soft law" documents, such as the IFRC Guidelines, which had already been endorsed by States and which provide more detail on operational issues. In principle, a global treaty could add value by providing greater momentum for existing efforts to develop rules at the national level and by establishing clearer reciprocity of commitments between receiving States and international responders. Alternatively, the Commission's work could be taken up at the regional level, where there existed momentum in the development of new instruments. It remained

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[818] A/C.6/66/SR.24, para. 37; A/C.6/68/SR.25, para. 37; and A/C.6/69/SR.19, para. 96.

[819] A/C.6/67/SR.18, para. 118.

[820] A/C.6/64/SR.29, para. 40.

[821] A/C.6/65/SR.23, para. 58.

[822] A/C.6/68/SR.24, para. 60.

[823] A/C.6/67/SR.19, para. 20.

[824] A/C.6/64/SR.21, para. 78.

[825] A/C.6/69/SR.21, para. 76.

concerned as to whether an effort aimed at the development of a treaty might distract from developments at the national level.

407. IOM looked forward to the adoption of the draft articles in whatever form that States would consider the most appropriate.

408. The Office for the Coordination of Humanitarian Affairs supported the inclusion in the commentary of a reference to the status of the draft articles, as well as further discussion on whether the draft articles should form the basis of a binding international treaty.

409. WFP welcomed the possibility that the draft articles could become a treaty in the area of disaster response, which would be particularly useful in countries where WFP had not concluded a host agreement or where it had not been able to address comprehensively the aspects covered by the draft articles. It expressed the hope that negotiations with State actors would benefit from the existence of a legal framework for assistance, which would allow assisting actors to focus their negotiations with affected States more specifically on what was needed to reduce the risk of emergencies and respond to them.

3. Recommendation of the Special Rapporteur

410. The Special Rapporteur wishes to note that, pursuant to its Statute, it is for the Commission to submit to the General Assembly the result of its final work on a given topic, accompanied by a recommendation on the final form it should take. It is ultimately up to the States represented in the General Assembly, however, to make a decision thereon. The fact that the Commission's final work may have taken the form of draft articles in no way prejudges the Commission's recommendation or the Assembly's decision. The draft articles are not, in themselves, binding. Their binding effect would result from their being embodied in an international convention or judicially proclaimed to be rules of customary international law.

411. For the Special Rapporteur, the surest and most timely manner by which the draft articles on the protection of persons in the event of disasters can serve their purpose and become truly effective in the face of the increasing frequency and intensity of disasters would be to use them as the basis for the adoption of a binding instrument, such as an international convention.

412. In support of his position, the Special Rapporteur firmly subscribes to the forceful and persuasive comments and observations made in this regard by IFRC, the international body with the longest historical experience regarding the humanitarian response to disasters. The greater value attached to a binding instrument was recognized, with explicit reference to the Commission's work on the present topic, in the outcome statement on governance and legislation on disaster risk reduction, adopted at the parliamentary meeting convened by the Inter-Parliamentary Union, the oldest of international organizations, on the occasion of the Third United Nations World Conference on Disaster Risk Reduction. Strong support has been recently voiced for the adoption of a binding instrument on a closely related topic, climate change, by the Heads of State of France and the United States, among others.

413. A recommendation in favour of the conclusion of an international convention would be in full conformity with the practice of the Commission with regard to several of its final draft articles on a number of topics, most recently on the

responsibility of States for internationally wrongful acts, the prevention of transboundary harm from hazardous activities, diplomatic protection, the effects of armed conflicts on treaties, law on transboundary aquifers, the responsibility of international organizations and the expulsion of aliens.

414. In the light of the foregoing, the Special Rapporteur strongly recommends to the Commission the adoption of its own recommendation to the General Assembly in favour of an international convention, to be concluded on the basis of its final draft articles on the protection of persons in the event of disasters.

Annex

Preamble and text of the draft articles on the protection of persons in the event of disasters, as proposed by the Special Rapporteur in his eighth report

Protection of persons in the event of disasters

Preamble

Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering the increasing frequency and severity of natural and human-made disasters and their subsequent short-term and long-term damaging impact,

Deeply concerned about the suffering of the persons affected by disasters and conscious of the need to respect and protect their dignity and rights in such circumstances,

Mindful of the importance of strengthening international cooperation in relation to all phases of a disaster,

Stressing the fundamental principle of the sovereign equality of States and its corollary, the duty not to intervene in matters within the domestic jurisdiction of any State and, consequently, *reaffirming* the primary role of the affected State in the taking of action related to the provision of disaster relief and assistance,

The … agree as follows:

Article 1
Scope

The present draft articles apply to the protection of persons in the event of disasters.

Article 2
Purpose

The purpose of the present draft articles is to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.

Article 3
Definition of disaster

"Disaster" means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, displacement, or large-scale material, economic or environmental damage, thereby seriously disrupting the functioning of society.

Article 4
Use of terms

For the purposes of the present draft articles:

(a) "affected State" means the State in the territory or otherwise under the jurisdiction or control of which persons, property or the environment are affected by a disaster;

(b) "assisting State" means a State providing assistance to an affected State at its request or with its consent;

(c) "other assisting actor" means a competent intergovernmental organization, or a relevant non-governmental organization or any other entity or individual external to the affected State, providing assistance to that State at its request or with its consent;

(d) "external assistance" means relief personnel, equipment and goods and services provided to an affected State by assisting States or other assisting actors for disaster relief assistance;

(e) "relief personnel" means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance; military assets shall be used only where there is no comparable civilian alternative to meet a critical humanitarian need;

(f) "equipment and goods" means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles, telecommunications equipment and other objects for disaster relief assistance.

Article 5
Human dignity

In responding to disasters, States and other assisting actors shall respect and protect the inherent dignity of the human person.

Article 6
Human rights

Persons affected by disasters are entitled to the respect, protection and fulfillment of their human rights.

Article 7
Principles of humanitarian response

Response to disasters shall take place in accordance with the principles of humanity, no harm, independence, neutrality and impartiality, in particular on the basis of non-discrimination, while taking into account the needs of the most vulnerable.

Article 8
Duty to cooperate

In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, in particular its Emergency Relief

Coordinator, with the components of the Red Cross and Red Crescent Movement and with other assisting actors.

Article 9

Forms of cooperation

For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.

Article 10

Cooperation for disaster risk reduction

The duty to cooperate enshrined in draft article 8 shall extend to the taking of measures intended to reduce the risk of disasters.

Article 11

Reduction of risk of disasters

1. Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent the creation of new risk and reduce existing risk and to mitigate and prepare for disasters.

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information and the installation and operation of early warning systems.

Article 12

Role of the affected State

1. The affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief and assistance on its territory.

2. The affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance.

Article 13

Duty of the affected State to seek external assistance

When an affected State determines that a disaster exceeds its national response capacity, it has the duty to seek assistance from among other States, the United Nations and other potential assisting actors, as appropriate.

Article 14

Consent of the affected State to external assistance

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld or withdrawn arbitrarily.

3. When a good faith offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer in a timely manner.

Article 15
Conditions on the provision of external assistance

1. The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law, and the national law of the affected State. Conditions shall reflect the identified needs of the persons affected by disasters and the quality of the assistance.

2. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Article 16
Offers of external assistance

In responding to disasters, States, the United Nations and other potential assisting actors may address an offer of assistance to the affected State.

Article 17
Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding in particular:

(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement;

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Article 18
Protection of relief personnel, equipment and goods

The affected State shall take the appropriate measures to ensure the protection of relief personnel, equipment and goods present in its territory for the purpose of providing external assistance.

Article 19
Termination of external assistance

The affected State and the assisting State, and as appropriate other assisting actors, shall, in the exercise of their right to terminate external assistance at any time, consult with respect to such termination and its modalities. The affected State, the assisting State or other assisting actor wishing to terminate shall provide appropriate notification.

Article 20
Relationship to special or other rules of international law

The present draft articles are without prejudice to regional and bilateral treaties and special or other rules of international law otherwise applicable in the event of disasters.

Article 21 [4]
Relationship to international humanitarian law

The present draft articles are without prejudice to the rules of international humanitarian law applicable in the event of disasters.